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**THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT MBARARA
CRIMINAL APPEAL No. 092 OF 2013**

KIIZA ENOCK ::: APPELLANT

VERSUS

10 **UGANDA ::: RESPONDENT**

(An appeal from the decision of the High Court of Uganda at Mbarara before His Lordship Mr. Justice Bashaija K Andrew in High Court Criminal Session case No. 117 of 2013 delivered on 18th June, 2013)

15 **CORAM: HON. LADY. JUSTICE ELIZABETH MUSOKE, JA
HON. MR. JUSTICE BARISHAKI CHEBORION, JA
HON. MR. JUSTICE CHRISTOPHER MADRAMA, JA**

JUDGMENT OF THE COURT

20 **Introduction**

This is an appeal from the decision of Bashaija K. Andrew, J in High Court Criminal Session Case No. 117 of 2013 at Mbarara wherein the appellant was convicted of the offence of Manslaughter contrary to Section 187 and 190 of the Penal Code Act, Cap 120 and sentenced to
25 15 years imprisonment on 18th June, 2013.

Background to the appeal

The particulars of the offence were that on 20th February, 2011, Nuwagira Frank, the deceased was drinking at Mwogeza's bar with other people in Nyamirima Trading Centre. He decided to go back home at
30 about 11:00pm and after moving for about 100 metres he noticed that the appellant and two others whom he had been drinking with were following him. They ordered him to sit down and remove his gumboots

which he did. The appellant then kicked him several times in the lower abdomen while the deceased made an alarm which could not be answered because of the loud music. When the owner of the bar came out to check on the generator, he found the appellant beating up the deceased and alerted people in the bar.

The accused was arrested by the people who came out of the bar but as they tried identifying the victim, he escaped and run away. The deceased was rushed to Kazo Health Centre but he was not improving. He was then taken to Rushere Community Hospital until 10th March, 2011, where he died. The appellant went in hiding for a year and five months until August 2012 when he was arrested on a case of stealing cattle in Mubende. He was charged, convicted and sentenced to 15 years imprisonment following his own plea of guilt.

The appellant now, with leave of Court, appeals against sentence only. The appellant sets forth one ground of appeal as follows:-

"The learned trial Judge erred in law and fact when he wrongly addressed his mind to the manner of commission of the offence and meted out a severe sentence and occasioned a failure of justice."

Representations

At the hearing of this appeal, Mr. Sam Dhabangi, learned Counsel appeared for the appellant on State Brief, while Mr. Alex Bagada, the Assistant Director of Public Prosecutions represented the respondent.

The appellant was present.

The submissions

It was submitted for the appellant that the murder happened during a drunken scuffle, when the appellant kicked the deceased in the lower

abdomen. Counsel submitted that the victim did not die on the spot, he
60 raised an alarm, was taken to hospital and died 18 days later. In his
view, there was a possibility that if he had got better treatment, he
would not have died.

Counsel further submitted that the summary of the case did not indicate
what the cause of that attack on the deceased was; it was a drunken
65 scuffle of some kind and there was no malice aforethought. He argued
that this was a clear case of manslaughter where the sentence of 15
years imprisonment imposed was manifestly excessive. Further, the
appellant pleaded guilty at the trial, he was remorseful and apologised
for his actions, and this should have been considered as a mitigating
70 factor.

He invited Court to reduce the term of 15 years to 8 years
imprisonment.

In reply, counsel for the respondent contended that the appellant
disappeared after commission of the offence; he was in hiding for
75 almost for a year and five months evading justice. Given the
circumstances, he proposed a sentence of 10 years imprisonment.

In rejoinder, Counsel for the appellant reiterated his earlier submissions
that the appellant did not intend to deal the deceased a death blow, and
when he was arrested, he readily pleaded guilty.

80 **Decision of the Court**

We have carefully listened to the submissions of Counsel on either side,
and carefully perused the Court record and the authorities cited to us.

We are alive to the requirement that as a first appellate court we must
re-appraise all the evidence before court and make our own inferences



85 on all issues of law and fact. **See Rule 30(1) of the Rules of this Court, and Kifamunte Henry versus Uganda: Supreme Court Criminal Appeal No. 10 of 1997.**

Mr. Dhabangi, learned Counsel for the appellant submitted that the sentence of 15 years imprisonment imposed was harsh and excessive
90 yet this was a case of manslaughter and the appellant had readily pleaded guilty. Mr. Bagada, learned counsel for the State submitted that there was material evidence to justify the imposition of the 15 years imprisonment.

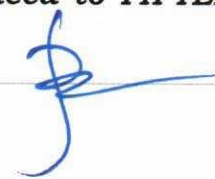
We are alive to the fact that this court can only interfere with the
95 sentence of the trial Court if that sentence is illegal or is based on a wrong principle or the Court has overlooked a material factor, or where the sentence is manifestly excessive or so low as to amount to a miscarriage of Justice. Sentences imposed in previous cases of similar nature, while not being precedents, do afford material for consideration.
100 **See Kizito Senkula vs. Uganda, Supreme Court Criminal Appeal No. 24/2001 and Ogalo s/o Owuora versus R [1954] 21 EACA 270.**

In this case, the legality of the sentence is not in issue. What is contested is the severity of the sentence. While coming to decision, the
105 learned trial Judge had this to say:-

"In arriving at sentence, the following are the major considerations:-

- i. The manner of commission was aggravated.***
- ii. There is need to deter such offences.***
- 110 ***iii. The convict has pleaded readily guilty and saved Court's time.***
- iv. The period of 10 months spent on remand.***

All factors taken together; the convict is sentenced to FIFTEEN years imprisonment."



115 We note that the maximum sentence for the offence of manslaughter is
life imprisonment. It appears to us that the learned trial Judge in this
case considered the plea of guilt and time spent on remand. He did not,
however, consider all the mitigating factors pleaded such as the fact that
120 the appellant was a first offender; his age of 25 years made him a very
young man at the time of commission of the offence; he was remorseful
and a family man with a wife and children. Had he considered all the
factors, he would have come to a different conclusion.

In **Livingstone Kakooza versus Uganda, Supreme Court Criminal
Appeal No. 017 of 1993(unreported)**, the Supreme Court reduced
125 the sentence of life imprisonment to 10 years imprisonment. The
appellant in that case had been convicted of manslaughter as in the
instant case.

In another case of **Ainobushobozi Venancio versus Uganda, Court
of Appeal criminal Appeal No. 242 of 2014**, the sentence of life
130 imprisonment imposed was reduced to 12 years imprisonment. In that
case the appellant had pushed the deceased and he fell on a fixed
stump. He died a few minutes later after being taken to the clinic.

In yet another case of **Rwamunda Charles versus Uganda,
Supreme Court Criminal Appeal No. 006 of 1993**, the appellant
135 had been convicted on two counts of manslaughter and sentenced to
imprisonment for 12 years on each count. The Supreme Court dismissed
the appeal and maintained the sentence on appeal.

Although past decisions with regard to sentences do not have the
authority of precedents, they do provide a range which ought to be
140 considered for purposes of achieving some measure of uniformity when
dealing with similar cases. Taking into account the aggravating and



mitigating factors in this case, we deem a term of 10 years imprisonment to be an appropriate sentence in the circumstances of this appeal. From that sentence, we deduct the period of 10 months spent in
145 pre-trial detention. The appellant shall, therefore, serve a term of 9 years and 2 months from 18st June, 2013, the date of conviction.

For the foregoing reasons, the appeal against sentence is allowed to the extent indicated above.

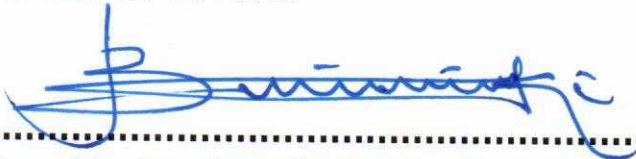
We so order.

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



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Hon. Lady Justice Elizabeth Musoke
JUSTICE OF APPEAL

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Hon. Mr. Justice Cheborion Barishaki
JUSTICE OF APPEAL

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Hon. Mr. Justice Christopher Madrama
JUSTICE OF APPEAL

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