**THE REPUBLIC OF UGANDA**

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

**CRIMINAL APPEAL NO. 63 OF 2010**

**OMAKA CHARLES.....APPELLANT**

**VERSUS**

**UGANDA.....RESPONDENT**

**CORAM: Hon. Mr. Justice Kenneth Kakuru, JA**
**Hon. Mr. Justice Ezekiel Muhanguzi, JA**
**Hon. Mr. Justice Christopher Madrama, JA**

## JUDGMENT OF THE COURT

This is an appeal from the Judgment of Hon. Mr. Justice J.W.Kwesiga in High Court *Criminal Case No. 003 of 2008* at Arua dated 5th October 2010.

The appellant herein was convicted of the offence of murder contrary to *Sections 188* and *189* of Penal code Act and sentenced to 30 years imprisonment. He now appeals against sentence alone, having been granted leave to do so under *Section 132(1)(b)* of the Trial on Indictments Act on single ground of the appeal set out in the Memorandum of Appeal as follows;-

> *"Sentence of the appellant by the learned trial Judge to 30 years imprisonment is very harsh and excessive. (Sic).*

**Representations**

The appellant was represented by learned Counsel Mr. Samuel Ondoma on State brief while, learned Principal State Attorney Mr. Moses Onencan appeared for the respondent. The appellant was present in Court.

**The Appellant's case**

Counsel submitted that, the 30 year sentence imposed upon the appellant by the learned trial Judge was manifestly harsh and excessive considering the circumstances of the case.

He submitted that, the deceased was killed by a mob of which the appellant was part. The deceased had fought and killed Onencan and the mob attacked him as a result. He contended that the above factor was not considered in mitigation of sentence. Had it been considered, counsel submitted, the sentence would have been considerably reduced.

He asked the Court to allow the appeal and reduce the sentence from 30 years to 15 years imprisonment.

**The Respondent's Case**

Mr. Onencan, opposed the appeal and supported the sentence of the trial Court.

He contended that the learned trial Judge considered all the mitigating and aggravating factors before coming to the decision that he did. Further that, this Court cannot interfere with the discretion of the trial Court in sentencing unless the trial Judge had failed to consider an important matter or circumstances which ought to have been considered, or was based on a wrong principle or was manifestly excessive or low as to amount to an injustice. For this proposition he relied on the decision of the Supreme Court in *Kiwalabye Bernard vs Uganda, Supreme Court Criminal Appeal No. 143 of 2001.*

Counsel submitted that the maximum sentence for the offence of murder is death and the appellant was in the circumstances of this case given an appropriate sentence of 30 years which this Court ought not to interfere with.

He asked Court to confirm the Sentence.

## Resolution of Court

This is a first appeal, and as such we are required to re-evaluate the evidence and come to our own inferences on all issues of law and fact. See: *Rule 30 (1)* of the Rules of this Court, *Bogere Moses vs Uganda, Supreme Court Criminal Appeal No. 1 of 1997,* and *Kifamunte Henry vs Uganda, Supreme Court Criminal Appeal No. 10 of 1997.*

However, this appeal is against sentence alone. The power of this Court to interfere with the sentencing discretion of the trial Court is limited. It can only do so following the principles set out by the Court of Appeal of East Africa in Ogalo s/o Owoura Vs R [1954]24 EACA 270 which has been followed since and was more recently re-emphasized by the Supreme Court in *Kiwalabye Bernard vs Uganda* (Supra) as follows:-

> *"The appellate Court is not to interfere with the sentence imposed by a trial court which has exercised its discretion on sentence unless the exercise of the discretion is such that its results in the sentence imposed to be manifestly excessive or so low as to amount to a miscarriage of justice or where a trial court ignores to consider an important matter or circumstances which ought to be considered while passing the sentence or where the sentence imposed is wrong in principle."*

In this case the learned trial Judge while passing sentence stated as follows at pages 10 and 11 of his Judgment:-

> *"The accused person is a known man of 48 years of age, who has been on remand for 3 years, he is a first offender who has pleaded for lenience.*
>
> *I have considered all the above. I have considered the savage and merciless manner in which he cut Oucha George to death. He commanded other culprits to end the deceased's life in a brutal manner, he does not respect human life. A death sentence will not teach the accused person a lesson that he lives to regret*

*his action. He does not deserve to go back to society while he still has the mind and energy to act as brutally as he did for this reason he will be kept away for 30 years. I sentence him to (30) thirty years imprisonment."*

Clearly the learned trial Judge did not take into account the circumstances under which the offence of murder was committed. The appellant was part of the mob that was seeking revenge against the deceased, who had killed Onencan. We think this ought to have been considered as it points to lack of premeditation. It appears to have happened in the heat of the moment.

In *Kamya Abdullah & 4 others Vs Uganda, Supreme Court Criminal Appeal No. 24 of 2015,* the deceased was killed by a mob, the appellants were accordingly sentenced to 40 years imprisonment, this Court substituted the sentence of 40 years imprisonment with 30 years imprisonment. On further appeal the Supreme Court reduced the sentence to 18 years imprisonment.

In *Sunday Gordon Vs Uganda, Court of Appeal Criminal Appeal No. 103 of 2006*, the appellant was part of a mob which murdered the deceased, he was convicted and sentenced to life imprisonment. On appeal this Court upheld the sentence of life imprisonment. We consider that this sentence was harsh in view of the Supreme Court decision in *Kamya Abdullah & 4 others Vs Uganda (supra).*

In *Sibwa Paul Vs Uganda, Court of Appeal Criminal Appeal No 23 of 2012.* The appellant with others attacked the deceased, tied him with ropes and assaulted him. They tried to take him to hospital but he died on the way. The appellants were arrested, charged with murder, convicted and sentenced to 14 years imprisonment each. On appeal, this Court upheld the sentence of 14 years imprisonment.

In the circumstance we consider that a sentence of 18 years imprisonment would have been more appropriate, considering that the appellant had already spent 3 years and 1 month on pre-trial detention.

Accordingly this appeal is allowed to the extent that the sentence is reduced from 30 years to 18 years imprisonment, to run from 5th May 2010 the date of conviction.

**Dated** at Arua this 28th day of December 2018.

.....

**Hon. Kenneth Kakuru**
**JUSTICE OF APPEAL**

.....

**Hon. Ezekiel Muhanguzi**
**JUSTICE OF APPEAL**

.....

**Hon. Christopher Madrama**
**JUSTICE OF APPEAL**