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THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT MASAKA
CRIMINAL APPEAL NOS. 264 & 277 OF 2012

(CORAM: F.M.S Egonda-Ntende, JA, Hellen Obura, JA and Stephen Musota, JA)

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1. KWASAHU FRANCIS
2. NAKABOGO JOSEPHINE
3. HABYARIMANA ANTHONY Alias Atoni ::::::::::::::::::::APPELLANTS

VERSUS

UGANDA::RESPONDENT

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(Appeal from the decision of Hon. Lady Justice Elizabeth Ibanda Nahamya holden at Masaka High Court Criminal Session Case No. 32 of 2010 delivered on 25/11/2011)

JUDGMENT OF THE COURT

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This is an appeal against a sentence of imprisonment for life imposed on the appellants by Hon. Lady Justice Elizabeth Ibanda Nahamya, J on 25th November, 2011 for the offence of murder contrary to sections 188 and 189 of the Penal Code Act.

Background to the Appeal

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The facts giving rise to this appeal as found by the trial Judge are that the deceased, Walugembe Fred lived together with Nakabugo Josephine (the 2nd appellant) as husband and wife. In 2009, the couple had a misunderstanding and the deceased advised the 2nd appellant to leave his home. She felt cheated and hatched a plan to murder him. She asked the 1st appellant to help her murder the deceased and he (1st appellant) in turn contacted the 3rd appellant to assist him execute the murder plot. On the fateful day, in the month of September

5 2009, the 2nd appellant invited the 1st and 3rd appellants to her house. While in the house, a quarrel ensued between the deceased and his assailants who were armed with pangas. After murdering the deceased the 1st and 3rd appellants dumped the body in the pit which had been dug in the compound to tap water. They later removed the body of the deceased from the pit and threw it in the bush. On 18/10/2009, the body of the deceased was discovered in the
10 bush by the police and the relatives from where it had been dumped by the assailants. On 19/10/2009, the appellants were arrested and indicted with the offence of murder. They were tried, convicted and sentenced to imprisonment for the rest of their lives.

Being dissatisfied with the decision of the trial Judge, the appellants with the leave of this Court appealed against sentence only on one ground as amended namely that;

15 *“The learned trial Judge erred in law and fact when she sentenced the appellants to imprisonment for the remainder of their lives.”*

Representations

At the hearing of this appeal, Mr. Tusingwire Andrew represented the appellants on state brief while Ms. Ann Kabajungu, a Senior Principal State Attorney from the Office of the Director
20 Public Prosecutions represented the respondent.

Case for the Appellants

At the commencement of the hearing of this appeal, counsel for the appellants sought leave from this Court to orally apply for extension of time within which to file a notice of appeal for the 3rd appellant. He was granted leave and the notice of appeal was filed and validated.
25 Leave was also granted for the appellant to amend the memorandum of appeal and to appeal against sentence only.

- 5 Counsel for the appellants submitted that the sentence for imprisonment for the remainder of the lives of the appellants was harsh and excessive. He based his submission on the case of **Abasa Johnson vs Uganda, CACA No. 33 of 2010** in which this Court elaborated on the circumstances under which a sentence can be interfered with. He implored court to invoke section 11 of the Judicature Act and impose a lesser sentence on the appellants.
- 10 Counsel also invited court to exercise uniformity of sentence in the exercise of its discretion. He referred to the cases of **Mbunya Godfrey vs Uganda, SCCA No. 4 of 2011; Akbar Hussein Goddie vs Uganda, SCCA No. 3 of 2013; Kyaterekera George William vs Uganda CACA No. 113 of 2010; Wehayumana Molly vs Uganda, CACA No. 103 of 2009.**
- 15 Conversely, counsel for the respondent submitted that the sentence is fixed by law and it is not harsh and excessive considering the circumstances of this case. She referred to the case of **Ssekawoya Blasio vs Uganda, SCCA No. 24 of 2014** in which the Supreme Court upheld a life imprisonment sentence and clarified that the appellant should spend the rest of his natural life in prison. Counsel also submitted that in the case of **Tigo Stephen vs Uganda,**
- 20 **SCCA No. 08 of 2009** the Supreme Court held that imprisonment for life meant imprisonment for the rest of the convict's natural life. She prayed that this Court upholds the sentence.

Resolution by the Court

As a general principle, this Court can only exercise its power to reduce a sentence imposed by the lower court where the exercise of discretion by the lower court is such that it results in

25 the sentence imposed to be manifestly excessive or so low as to amount to a miscarriage of justice or where the trial court ignores to consider an important matter or circumstance which ought to be considered while passing sentence or where the sentence imposed is wrong in principle. **See: Kiwalabye Bernard vs Uganda, Supreme Court Criminal Appeal No.143 of 2001 (unreported)**



5 Bearing in mind the above stated principles, we have perused the record and more particularly, the sentencing proceedings with a view of finding whether there are any grounds for interfering with the sentence.

We take note of the choice of words used by the learned trial Judge in sentencing the appellants which we respectfully find vague. For that reason we wish to first clarify on that
10 before proceeding to determine the ground of appeal. The trial Judge sentenced each of the appellants to a term of imprisonment for the remainder of their lives. There is no provision of such a sentence in our laws. What is provided for under our laws is imprisonment for life or life imprisonment. We believe that by sentencing the appellants to “a term of imprisonment for the remainder of their lives” the learned trial Judge was referring to a sentence of life
15 imprisonment as defined by the Supreme Court in **Tigo Stephen vs Uganda (supra)**, where it was stated that life imprisonment means imprisonment for the natural life term of a convict, though the actual period of imprisonment may stand reduced on account of remission earned. We therefore, find that the appellants are appealing against a sentence of life imprisonment which according to them is harsh and excessive in the circumstances of this case.

20 We shall now proceed to determine whether the sentences are indeed harsh and excessive in the circumstances as alleged. The mitigating factors presented were that the 1st appellant had 5 children under his care, he was 34 years at the time of committing the offence, he spent 2 years on remand and he has learnt a lesson. For the 2nd appellant, it was presented that she has 6 children the youngest being 3 years old and the eldest was 15 years old, she was
25 30 years at the time of committing the offence, she spent 2 years on remand and has learnt many things from prison. For the 3rd appellant, it was presented that he is remorseful, he was 57 years at the time of committing the offence, he spent 2 years on remand and he has 4 children some of whom lost their mother. Counsel prayed for a lenient sentence for each of the appellants.

5 The aggravating factors presented were that the offence of murder is grave and carries a maximum sentence of death. The 2nd appellant was married to the deceased for 16 years. The murder was well-planned and committed with impunity. The convicts used deadly weapons, they cut off the deceased's private parts and some flesh off the leg then disposed of the body in a bush to rot. The convicts were cruel and inhumane and have no place in our
10 society. A sentence of 50 years imprisonment was prayed for.

Having considered both the mitigating and aggravating factors the trial Judge sentenced the appellants as stated above. We ourselves have considered the above factors as well as looked at cases with similar circumstances for purposes of ascertaining whether there is a need to interfere with the discretion of the trial Judge.

15 In **Obote William vs Uganda, SCCA No. 12 of 2014** the Supreme Court upheld a sentence of life imprisonment against the appellant who was convicted of murdering his wife by shooting.

In **Magezi Gad vs Uganda, CACA No. 17 of 2014** the appellant and his accomplice went to the home of the deceased claiming to be his relatives and wanted to spend the night at his
20 home. After a while, the deceased left for the kitchen and the appellant's colleague followed him. He used a panga to cut the deceased on the head whereupon he died instantly. Both men fled the crime scene but were later arrested, indicted, tried and convicted of murder. The appellant's co-accused died before the end of the trial while the appellant upon conviction was sentenced to life imprisonment. He appealed to this Court which confirmed the decision
25 of the trial court. He then appealed to the Supreme Court which confirmed both the decision of this Court and the trial court.

It should be noted that the maximum sentence for the offence of murder is death. However, in the exercise of her discretion, the learned trial Judge found it befitting to sentence the

5 appellants to life imprisonment, which sentence we find lenient given the circumstances of the case and the range of sentences in similar cases we have considered above.

In the premises, we do not find any reason to interfere with the sentence imposed by the trial Judge. We accordingly dismiss this appeal and uphold both the conviction and sentence.

We so order.

10 Dated at **Masaka** this ^{30th} day of ^{July}2018




Hon. Justice F.M.S Egonda-Ntende

JUSTICE OF APPEAL

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Hon. Lady Justice Hellen Obura

JUSTICE OF APPEAL



Hon. Justice Stephen Musota

JUSTICE OF APPEAL

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