THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT MBARARA

CRIMINAL APPEAL NO.098 OF 2013

ARINAITWE YUSUF::APPELLANT

VERSUS

UGANDA:::RESPONDENT

(An Appeal from the decision of the High court of Uganda sitting at Mbarara delivered on 19th June, 2013 in criminal session case no.0153 of 2013 by Justice Bashaija K. Andrew)

CORAM: HON. LADY JUSTICE ELIZABETH MUSOKE, JA

HON. MR. JUSTICE CHEBORION BARISHAKI, JA

HON. MR. JUSTICE CHRISTOPHER IZAMA MADRAMA, JA

JUDGMENT

Introduction

The appellant was indicted and convicted on his own plea of guilty of the offence of murder contrary to sections 188 and 189 of the Penal Code Act. The particulars of the offence were that the appellant on the 10th day of October 2012 at Kyanika Village in Ibanda District murdered Asiimwe Dorcus. On 19th June, 2013, the learned trial Judge sentenced him to 25 years imprisonment. He now

appeals against sentence only on the sole ground that the sentence of 25 years imprisonment was manifestly harsh and excessive.

At the hearing of the appeal, Mr. Emmanuel Tumwebaze held brief for Mr. Ampurirwe Henry for the appellant while the respondent was represented by Mr. David Ndamurani Ateenyi, Senior Assistant DPP.

With leave of Court, counsel for the appellant submitted that considering the mitigating factors that were presented before the learned trial Judge, the sentence of 25 years was harsh and excessive. He based his argument on the ground that the appellant was a young man aged 26 who ought to have been given a chance to reform and allowed to integrate in society; he had two children and was HIV Positive. For those reasons, he invited Court to reduce the sentence to 15 years. He referred Court to the decision in ***Rwabugande Moses V Uganda, Supreme Court Criminal Appeal No.25 of 2014*** where the Supreme Court reduced sentence of 35 years to 21 years.

In reply, counsel for the respondent submitted that the offence for which the appellant was convicted of was of a serious nature and carried a maximum sentence of death. He added that the learned trial Judge was alive to the brutal manner in which the appellant had murdered his wife and that in sentencing the appellant to 25 years imprisonment, the trial Judge was lenient. He invited Court to uphold the sentence of 25 years imposed by the trial Judge.

We have studied the Court record and listened to the submissions of both counsel. It is our duty as the first appellate Court to review the evidence of the case and to reconsider the materials before the trial judge. We must then make up our own mind not disregarding the judgment appealed from but carefully weighing and considering it. ***See Rule 30(1) of the Rules of this Court, Kifamunte Henry V Uganda, Supreme Court Criminal Appeal No.10 of 1997.***

This is an appeal against sentence only and the principles upon which an appellate can interfere with the sentence of the lower Court were set out by the Supreme Court in ***Kiwalabye Bernard V Uganda, SCCA No.143 of 2001*** when it held that the appellate Court is not to interfere with the sentence imposed by the trial Court which has exercised its discretion unless the exercise of this discretion is such that it results into a sentence being 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 circumstance which ought to be considered while passing the sentence or where the sentence imposed is wrong in principle.

The background of the case is that the deceased was a wife to the appellant. On the 10th of October, 2012, they started the day well by both going to work in their garden from morning up to 3:00pm. Surprisingly, upon returning home, the appellant got a panga and cut the deceased several times killing her instantly. After doing so, he went to his father with a panga and told him that he had

carried out his mission and reported himself to Police where he recorded a Charge and Caution statement admitting the offence.

In reaching at a sentence, the following are the main considerations;

i. The offence being very serious
ii. The brutal manner of commission
iii. The offence being rampant in nature
iv. The convict being a first offender
v. Time spent on remand
vi. Plea of guilty and saving time

and concluded that all factors taken together, the convict is sentenced to twenty five years' imprisonment."

In his written submissions, counsel for the appellant stated that the trial Judge did not take into consideration the period of 8 months that the appellant had spent on remand. According to counsel, the trial Judge did not mathematically deduct the remand period from the sentence as per Rwabugande (supra).

The Supreme Court has in ***Abelle Asuman V Uganda, Criminal Appeal No.066 of 2016*** while interpreting its decision in ***Rwabugande Moses V Uganda, Supreme Court Criminal Appeal No.25 of 2014*** stated that;

"What is material in that decision is that the period spent in lawful custody prior to the trial and sentencing of a convict must be taken into account and according to the case of ***Rwabugande*** *that remand period should be*

credited to a convict when he is sentenced to a term of imprisonment. This Court used the words to deduct and in an arithmetical way as a guide for the sentencing Courts but those metaphors are not derived from the Constitution.

Where a sentencing Court has clearly demonstrated that it has taken into account the period spent on remand to the credit of the convict, the sentence would not be interfered with by the appellate Court only because the sentencing Judge or Justices used different words in their judgment or missed to state that they deducted the period spent on remand. These may be issues of style for which a lower Court would not be faulted when in effect the Court has complied with the Constitutional obligation in Article 23(8) of the Constitution."

We therefore do not accept counsel for the appellant's submission that the trial Judge did not take into account the period of 8 months that the appellant had spent on remand. The trial Judge clearly stated that the period of remand as one of the main considerations he had taken before reaching the sentence.

It is clear that the sentencing Judge was alive to the brutal manner in which the appellant killed his wife to whom as a husband he owed a duty of care. Instead of being her protector, he became her villain. This type of conduct certainly calls for a deterrent sentence.

The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013 recommends a maximum sentence of death where

circumstances in the execution of the murder were the rarest of the rare. We do not consider the circumstances of this case to be such.

The guidelines make provision of a starting point of a sentence of 35 years imprisonment for murder when the death penalty is not imposed. In the instant case, the learned trial Judge sentenced the appellant to 25 years imprisonment way below the starting point.

We have considered all the above mitigating factors and the aggravating factors as well the period of 8 months spent on remand. We have also looked at the range of sentences imposed in similar offences. In ***Hon. Akbar Godi V Uganda, Supreme Court Criminal Appeal No.3 of 2013,*** Court confirmed a 25 year imprisonment where the appellant had killed his wife.

In ***Atuku Margret Opii V Uganda, Court of Appeal Criminal Appeal No.123 of 2008,*** this Court reduced a death sentence to 20 years imprisonment where the appellant was a single mother of 8 children and had been convicted of killing a 12 year old girl by drowning.

In ***Mbunya Godfrey V Uganda Supreme Court Criminal Appeal No.4 of 2011,*** the appellant was convicted of the murder of his wife and sentenced to death. On appeal, the Supreme Court set aside the death sentence and substituted it with 25 years' imprisonment.

In the premises, we find that the trial Judge in sentencing the appellant to 25 years exercised his discretion judiciously. This sentence in our view was neither harsh nor excessive considering the circumstances of this case. We therefore find no reason to interfere with the exercise of the trial Judge's discretion in sentencing the appellant to 25 years imprisonment.

We accordingly dismiss the appeal and confirm the sentence.

We so order

Dated at Mbarara this.....3rd.....day of.....October.....2018

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HON. LADY JUSTICE ELIZABETH MUSOKE

JUSTICE OF APPEAL

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HON. JUSTICE BARISHAKI CHEBORION

JUSTICE OF APPEAL

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HON. JUSTICE CHRISTOPHER IZAMA MADRAMA

JUSTICE OF APPEAL