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THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CRIMINAL APPEAL NO. 017 OF 2010

(Coram: Elizabeth Musoke, Hellen Obura & Ezekiel Muhanguzi JJA)

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1. BALIKOWA MASUDI
2. SADIC OLOBO ::APPELLANTS

VERSUS

UGANDA ::RESPONDENT

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(Appeal from the decision of Hon. Justice Vicent T. Zehurikize, J holden at the High Court at Luwero in Criminal Session Case No. 0084 of 2009 delivered on 27/01/2010)

JUDGMENT OF THE COURT

20 The appellants were convicted of the offence of murder contrary to sections 188 and 189 of the Penal Code Act and sentenced to life imprisonment by the High Court (Zehurikize, J). They now appeal against sentence only.

Background to the Appeal

25 The facts giving rise to this appeal as far as we could ascertain from the court record are that on 30/07/2005, the deceased went to Kalongo Trading Center but never came back. PW1 Namuwonge Hellen the step mother of the deceased and her husband became suspicious and reported the matter to Kalongo Police Post where they found police had recovered the deceased's slippers. Thereafter a search ensued whereupon the body of the deceased was found wrapped in Kavera and hidden in a forest. The appellants were arrested and indicted for the offence of murder, tried, convicted and sentenced to life imprisonment. Prior to the



5 deceased's death, there existed a grudge between his family and the appellants and the deceased was a witness in the case in which the appellants were convicted by the Nakasongola Court as a result of which a broker came and seized the appellant's cows.

Being dissatisfied with the decision of the trial Judge in this case, the appellants appealed to this Court against both conviction and sentence on the following grounds;

- 10 1. *The learned trial Judge erred in law and fact in failing to properly evaluate all evidence adduced at the trial hence occasioning a miscarriage of justice.*
2. *The learned trial Judge erred inn law and fact by admitting inadmissible confession of the co accused thus prejudicing the appellants.*
3. *The learned trial Judge erred in law and fact by relying on prosecution evidence full of*
15 *contradictions, inconsistencies, discrepancies and procedural irregularities to convict the appellants thereby occasioning a miscarriage of justice.*
4. *The learned trial Judge erred in law and fact when he entirely relied on uncorroborated circumstantial evidence to convict the appellants therefore occasioning a miscarriage of justice.*
- 20 5. *The learned trial Judge erred in law and fact in imposing an illegal, harsh and manifestly excessive sentence of imprisonment for life to the appellants in the circumstances.*

Representations

At the hearing of this appeal, Mr. Kafuko Ntuyo represented the appellants on State Brief
25 while Ms. Annet Namatovu, Senior State Attorney from the Office of the Director Public Prosecutions represented the respondent.

Counsel for the appellants informed court that the appellants agreed that he abandons the first four grounds and only argue ground 5 on sentence. He sought leave to appeal against



5 sentence only which was granted. Counsel submitted that considering the mitigating factors presented, the sentence of life imprisonment was harsh in the circumstances. He referred to the case of **Ogwal Alberto vs Uganda, CACA No. 46/2014** in which this Court set aside a sentence of life imprisonment for the offence of murder, invoked section 11 of the Judicature Act and sentenced the appellant to 16 years and 11 months. He prayed that the sentence be
10 reduced to between 10-15 years imprisonment.

Conversely, counsel for the respondent supported the sentence passed by the trial court. She contended that the sentence was not harsh and the appellants' counsel had not demonstrated that it was harsh in the circumstances of the case. She added that there were aggravating factors that warranted the sentence imposed for example the part of the body
15 targeted and the fact that the deceased had given evidence against the appellants in the lower court. She relied on the case of **Kasadha David & 2 ors vs Uganda, CACA No. 117/2009** to support her submission.

Court's Consideration

The duty of this Court as a first appellate court is to re-evaluate the evidence on record and
20 to re-consider the materials before the trial Judge and come up with its own conclusion as was held in **Kifamunte Henry vs Uganda, SCCA No. 10 of 1997**.

We have heard the submissions of both counsel and carefully perused the court record especially the sentencing proceedings. According to the Supreme Court decision in **Kiwalabye Bernard vs Uganda, SCCA No.143 of 2001 (unreported)** this Court may
25 interfere with a sentence of the trial Judge where the sentence imposed is 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.



5 In the instant appeal, the trial Judge imposed a sentence of life imprisonment for the offence of murder. We shall consider the aggravating and the mitigating factors and we shall also look at the sentencing range in cases of a similar nature in order to determine whether or not the sentence imposed is harsh and excessive in the circumstances.

The aggravating factor presented was that the appellants committed a grave offence which carries a maximum sentence of death. Counsel prayed that court imposes a deterrent sentence so that the public can value the gift of life. The mitigating factors presented were that the 1st appellant had spent 2 years and 7 months on remand; he was 25 years at the time of commission of the offence; he is still a young man capable of reforming; he appeared remorseful, and he is a family man with 3 wives and 17 children. The 2nd appellant was aged 15 33 years at the time of commission of the offence; he is still in his prime age; he is a family man with 4 wives and 30 children and he spent 4 years on remand. Counsel prayed for a lenient sentence.

On range of sentences, in ***Latif Buulo vs Uganda, Court of Appeal Criminal Appeal No. 0323 of 2014***, the appellant was convicted of murder and sentenced to death. Following the decision in ***Attorney General vs Susan Kigula and 417 ors (supra)***, the High Court at 20 Kampala conducted a mitigation hearing and re-sentenced the appellant to 30 years imprisonment. He appealed to this Court and his sentence was reduced to 25 years imprisonment.

In ***Tumwesigye Anthony vs Uganda, Court of Appeal Criminal Appeal No. 046 of 2012***, 25 the appellant had been convicted of murder and sentenced to 32 years. This Court sitting at Mbarara set aside the sentence and substituted it with 20 years.

In ***Emeju Juventine vs Uganda, Court of Appeal Criminal Appeal No. 095 of 2014***, the appellant was convicted of the offence of murder and sentenced to 23 years imprisonment. On appeal, this Court reduced the sentence to 18 years imprisonment.



5 Taking into consideration the sentencing range in the cases cited above together with the
aggravating and mitigating factors, we are of the considered view that the ends of justice will
be met by sentencing the appellants to 20 years imprisonment in the circumstances of this
case. We deduct the period of 2 years and 7 months the 1st appellant spent in lawful custody
and the period of 4 years the 2nd appellant spent in lawful custody and in the premises, we
10 sentence the 1st appellant to 17 years and 5 months imprisonment whereas the 2nd appellant
is sentenced to 16 years imprisonment which they will serve from the date of conviction, that
is 27/01/2010.

We so order.

Dated at Kampala this... 2nd day of... July2019

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Elizabeth Musoke
JUSTICE OF APPEAL

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Hellen Obura
JUSTICE OF APPEAL

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Ezekiel Muhanguzi
JUSTICE OF APPEAL