

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CRIMINAL APPEAL NO. 566 OF 2014

SEMPIJJA BRIANAPPELLANT

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VERSUS

UGANDARESPONDENT

*(Appeal against sentence of the High Court sitting at Nakawa before
Hon. Justice Elizabeth I. Nahamya, J, dated 04/06/2014)*

CORAM: HON. LADY JUSTICE ELIZABETH MUSOKE, JA,
HON. LADY JUSTICE HELLEN OBURA, JA
HON. Mr. JUSTICE EZEKIEL MUHANGUZI, JA

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JUDGMENT OF THE COURT

Introduction

15 This is a first appeal. The appellant herein was indicted, tried and convicted for the offence of Murder contrary to sections 188 and 189 of the Penal Code Act Cap. 120 on his own plea of guilt and sentenced to 23 years imprisonment.

Brief background

20 The facts of this case as far as we could ascertain from the record are that on 13/1/2013 at around 2:00pm, the appellant found his girlfriend, the deceased with her friend one Namata at a nearby restaurant and asked for the immunization card of their 10 months old child. The



25 appellant and the deceased moved out of the restaurant where they
picked a quarrel. The appellant started assaulting the deceased and she
made an alarm. The appellant picked a knife which he had on him and
stabbed the deceased several times on the chest, stomach, cheek,
hand, shoulder and ribs. Many people rushed to the scene but found
the deceased lying unconscious.

30 The incident was reported to Lubowa Police Station whereupon the
police came and rushed the deceased to Mulago hospital where she
died on 14/1/2013. The appellant was arrested, indicted, tried,
convicted of the offence of murder and consequently sentenced to 25
years imprisonment.

35 Being dissatisfied with the sentence alone and having been granted
leave under section 132 (1) (b) of the Trial on indictments Act Cap. 23,
the appellant now appeals to this court on the following grounds:-

40 **1. The learned trial judge erred in law and in fact when he passed a
sentence of (twenty five) 25 years imprisonment upon the
appellant and reviewed the sentence agreed upon in the plea
bargain agreement of 18 years tendered in court and without
any explanation for her decision and affording the accused and
the prosecution hearing on the proposed sentence of 18 years
which caused a miscarriage of justice.**

45 **2. The learned trial judge erred in law and in fact when he imposed
a harsh and excessive sentence of (twenty five) 25 years
imprisonment upon the appellant who had pleaded guilty to the
offence in the circumstances and failed to exercise her discretion
appropriately and thereby occasioned a miscarriage of justice.**

50 The appellant prayed court to allow the appeal, set aside the trial court's sentence and reinstate the sentence of 18 years imprisonment agreed to by the appellant in the plea bargain agreement.

Representation

55 At the hearing of this appeal, Mr. Bruno Sserunkuma, learned Counsel represented the appellant while Ms. Annet Namatovu Ddungu, learned Senior State Attorney represented the respondent. The appellant was in court.

Submissions by the appellant

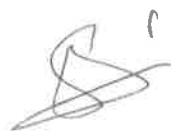
60 Counsel for the appellant argued grounds one and two together. He submitted that the appellant pleaded guilty to the offence and had agreed to a sentence of 18 years imprisonment under the plea bargain agreement. Counsel faulted the trial judge for wrongly exercising her
65 discretion when she varied the sentence agreed upon between the appellant and the prosecution at trial. Counsel argued that the varied sentence was without any explanation/reasons and this caused a miscarriage of justice.

70 He submitted that the sentence of 25 years imprisonment is harsh and excessive given the fact that the appellant pleaded guilty to the offence, was a first offender and of young age. Counsel asked court to reinstate the agreed sentence of 18 years imprisonment as per the plea bargain agreement.

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Submission by the Respondent

80 The Learned State Attorney conceded to the fact that the trial judge sentenced the appellant outside the plea bargain agreement and this is not in line with Rule 12(1) (g) of the Judicature (Plea Bargain) Rules, 2016. Counsel prayed court to reinstate the sentence of 18 years imprisonment as agreed in the plea bargain agreement and to deduct the period the appellant had spent on remand.

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Consideration by court

We have carefully listened to the submissions of both counsel and we have also perused the court record and the law cited to us. This court as a first appellate court, has a duty to re- appraise the evidence and 90 make its own inferences in all issues of law and fact.

See: Rule 30 (1) of the Judicature (Court of Appeal Rules) Directions S I 13-10, ***Kifamunte Henry V Uganda***, *Supreme Court Criminal Appeal No. 10 of 1997* and ***Bogere Moses V Uganda***, *Supreme Court Criminal Appeal No. 1 of 1997*.

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It is now a well settled position in law that the appellate court will only interfere with a sentence imposed by the High Court in a situation where the sentence is either illegal or founded upon a wrong principle of the law. It will equally interfere with sentence, where the trial court 100 has not considered a material factor in the case; or has imposed a sentence which is harsh and manifestly excessive in the circumstances.

See: ***James V R***, (1950) 18 EACA. 147, ***Ogalo s/o Owoura V R*** (1954) 24 EACA 270. These principles were more emphasized by the Supreme Court in ***Kiwalabye Bernard V. Uganda***, *Supreme Court Criminal Appeal 105 No.143 of 2001* as follows:



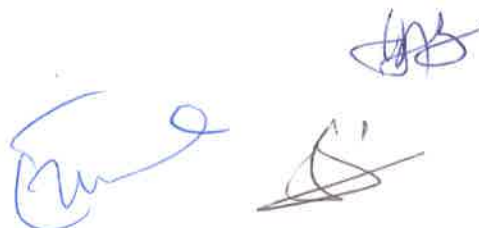
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110 *"The appellate Court is not to interfere with the sentence imposed by the trial Court which has exercised its discretion on sentence, unless the exercise of the discretion is such that it results in the sentence imposed to be manifestly excessive 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 her sentencing ruling, the trial judge found as follows:-

115 *"Having perused the aggravating and mitigating factors stated in the PBA (PE7) having noted the oral highlights made by the lawyers, I take note of the gravity of the offence. Murder is a grave offence and a convicted person is liable to suffer death. No one has a right to extinguish the life of another. The manner*
120 *in which you killed your girlfriend and a mother to your 10 months old baby is gruesome. I am astounded by the gruesome murder caused by such a young man and inflicted upon a teenager. The deceased was 16 years and a mother to your own child. That death will be devastating to the child when it grows up. I note that the court is enforced in paragraph 20 of the*
125 *sentencing guidelines to consider the degree of injury. The deceased was badly battered, cut and wounded. There was no specific part – almost on all parts of her body, chest, lip, umbilicus area, breast, shoulder, scalp, forearm, right hand, rib,*
130 *lung, ear. Surrounding hematoma, Intercostat muscles. All these injuries were caused by normal mentally sound young person. The injuries speak volumes on the intention of the*



convict. You deliberately stabbed her and wanted her dead considering the vital parts of the body injured.

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In my view, your girlfriend was a vulnerable person, young – a teenager, you demonstrated hostility towards her because of her gender. Whoever said that men cannot sacrifice to look after their children. You had options. You could have employed a nanny. There were multiple injuries which led to the

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degradation of the victim's family. According to PEI (Victim Impact Statement), the family of the victim is traumatized. Paragraph 21 of the sentencing guidelines lists the mitigating factors for a death sentence among which is some element of self defence. However, considering the force and impact on

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victim, the force used was unreasonable exceeding what a normal husband would use on a wife. I have considered the fact that you are first time offender, pleaded guilty, the remorsefulness of the offender. I see no provocation. I consider that you are young but I emphasize the fact that what you did

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and the manner you did it was terrible and gruesome. The aggravating factors in my view outweigh the mitigating factors. If you didn't come under the Plea Bargain process, a death penalty would be ideal. I will spare this. However, since you have such anger which is uncontrollable, you must be put away

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for a long time. I will therefore not accept 18 years imprisonment agreed upon by you, your lawyer and prosecution. It's hilarious, gruesome murder (sic). I will sentence you to 25 (twenty five years) imprisonment. The 1 year 4 months spent on remand is

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deducted. You will serve 23 years."

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From the above findings of the learned trial judge we note that the trial judge rejected the agreed sentence under the plea bargain agreement between the appellant and the prosecution. Her justification for rejecting the agreed sentence was that the offence was committed in a "hilarious" and gruesome manner and that the aggravating factors outweighed the mitigating factors.

The appellant's contention in this case, is that the learned trial judge rejected the agreed sentence and imposed a harsh and excessive sentence in the circumstances. Rule 13 of the Judicature (Plea Bargain) Rules, 2016 gives court discretion to reject a plea bargain agreement where it is satisfied that the agreement may occasion a miscarriage of justice. It provides as follows:-

13. Rejection of plea bargain agreement by court

(1) The court may reject a plea bargain agreement where it is satisfied that the agreement may occasion a miscarriage of justice.

(2) Where the court rejects a plea bargain agreement-

(a) it shall record the reasons for the rejection and inform the parties;

(b) the agreement shall become void and shall be inadmissible in subsequent trial proceedings or in any trial relating to the same facts; and

(c) the matter shall be referred for trial, subject to sub rule 8(3) (emphasis added)

We note that the Judge's sentence in this case was imposed on 4th June, 2014, long before the Plea Bargaining Rules came into force. However, even before the Rules came into force, the same principles applied, to wit, that where a judge rejects the Plea Bargain agreement, she/he will record the reasons therefor and refer back the file for full trial. There were guidelines to that effect.

In our view, when a trial judge accepts the plea bargain agreement on record, he/she must have read the whole agreement and found it justified to meet the ends of justice. By accepting the plea bargain on record, the trial judge is enjoined to take its content in its totality and not vary the sentence as he/she sees fit.

With due respect, we find that the learned trial Judge erred when she sentenced the appellant outside the plea-bargain agreement, to his prejudice. According to the court record, the parties had participated in plea bargain agreement whereby they agreed upon a sentence of 18 years imprisonment but the learned trial Judge enhanced the sentence to 23 years imprisonment. Having done so, we find the learned trial Judge erred when she departed from the sentence agreed to under the Plea Bargain Agreement.

We take note of the Plea Bargain Agreement signed by the parties on 24th May, 2014 and the terms thereof. The parties had agreed to 18 years imprisonment. We, therefore, accept the submissions of the learned counsel for the appellant that the learned trial Judge went outside her jurisdiction by imposing a higher sentence than agreed.



Both counsel for the appellant and the respondent asked court to
reinstatement the sentence of 18 years imprisonment as per the plea
bargain agreement.

In the premises, we set aside the sentence of 23 years imprisonment
for being outside the plea bargain agreement and invoke section 11 of
the Judicature Act Cap. 13 and reinstatement the agreed sentence of 18
years imprisonment. The sentence will run from 04/06/2014 when he
was first sentenced.

Dated at Kampala this 2nd day of July 2019.

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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

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