

**THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT MASAKA
CRIMINAL APPEAL No. 0236 OF 2017**

(Arising from High Court of Uganda at Masaka Criminal Session Case No. 0085 of 2014)

BUNJE PAUL **APPELLANT**

VERSUS

UGANDA **RESPONDENT**

(An appeal from the decision of the High Court of Uganda at Masaka before His Lordship Zeija, J. delivered on 4th May, 2017 in Criminal Session Case No. 0085 of 2014)

CORAM: HON. LADY JUSTICE ELIZABETH MUSOKE, JA

HON. MR. JUSTICE EZEKIEL MUHANGUZI, JA

HON. MR. JUSTICE REMMY KASULE, AG. JA

JUDGMENT OF THE COURT

Brief Background

This is a first appeal from the decision of the High Court. The appellant was jointly charged with another, who is not relevant to this appeal, with the offence of murder contrary to sections 188 and 189 of the Penal Code Act, Cap. 120. It was alleged that the two had, on the 13th day of December, 2013, at Mijunwa Village in Bukomansimbi District murdered one Kalimundi Donozio. They were duly committed and tried on an Indictment containing the above mentioned offence.

The appellant pleaded not guilty and his case went for trial before Zeija, J. However, on 4th May, 2017 when the case came up for further hearing of the prosecution case, the appellant opted to change his plea to a plea of guilty. The following facts were then read to him:

"The deceased, Kalimunda Donozio was at the time of his death a resident of Mujunwa Village in Bukomansimbi District. The appellant



was at the time of the commission of the offence 22 years old and resided in the same village as the deceased."

On the 13th day of December, 2013, the deceased was at his home with one Nakazibwe Mary. While there, the appellant together with a one Kakooza Edward, both armed with pangas attacked the deceased and cut him to death. They immediately run away from the village. The matter was reported to Bigasa Police Post and information was circulated about the disappearance of the two. The accused persons were later arrested following a tip off to Police in Lwabenge sub-county, Kalungu District, and were taken to Kalungu Police Station. While there, the appellant, Bunje Paul on 17th December, 2013 recorded a charge and caution statement before Assistant Inspector of Police, Aroho Ronald wherein he admitted that both him (sic) and Kakooza Edward had hacked the deceased to death. He stated that the duo killed Kalimunda because he had bewitched many of their relatives to death. He revealed to police how the hacking was caused out (sic). The two accused persons were taken back to Bukomansimbi and they led Police to where the two pangas had been hidden in Kasayi Village. The two pangas were recovered. The post mortem report showed that the deceased had several cuts (sic) wounds all over his body. The cause of the death was anemia (sic) as a result of haemorrhage and severe head injury as a result of trauma. The accused person was examined and found to be of normal mental status. He was charged alongside Kakooza Edward and thereafter indicted.

When the above facts were read to the appellant, he confirmed them to be true. He was subsequently convicted on his own plea of guilty and sentenced to serve a term of imprisonment of 30 years. He was dissatisfied with the decision of the High Court and brought this appeal. The grounds were contained in a memorandum of appeal dated 23rd September, 2019 as amended during the hearing and were as follows:

- "1. The learned Judge erred in law and fact when she sentenced the appellant to 30 years imprisonment which sentence is harsh and manifestly excessive in the circumstances.**



2. **The learned trial Judge erred in law and fact when he sentenced the appellant to 30 years imprisonment which sentence is illegal in the circumstances."**

Representation

At the hearing of the appeal, Ms. Namata Edith, learned Counsel, represented the appellant, while, Ms. Nyanzi Macrena Gladys, learned Assistant Director of Public Prosecutions from the Office of the Director of Public Prosecutions, represented the respondent. Counsel for each party made oral submissions.

Resolution of the Appeal.

This court granted leave to the appellant to pursue the appeal against sentence only.

We have carefully considered the submissions of counsel for each side, the court record as well as the law and authorities cited, and those not cited, which are relevant in the determination of the present appeal. This is a first appeal and we are alive to the duty of this Court as a first appellate court to reappraise the evidence and come up with its own inferences. **See: Rule 30 (1) of the Rules of this Court and Kifamunte Henry v. Uganda Supreme Court Criminal Appeal No. 10 of 1997.**

The above stated duty is not diminished in appeals concerning sentence alone like the present appeal. Even in such cases, the first appellate Court must reappraise the evidence, and make up its mind on whether the sentence imposed by the trial Court can be sustained.

It was contended for the appellant that the sentence passed by the trial Court was illegal. We have reproduced the relevant portion of the judgment of the trial Court at page 34 of the record:

"The convict committed the offence in a gruesome manner. Though he pleaded guilty, he did so after the prosecution had labored a lot and prove the case against him (sic). Nevertheless, that is a sign of remorse. His co-accused pleaded guilty straight away and was sentenced to 24



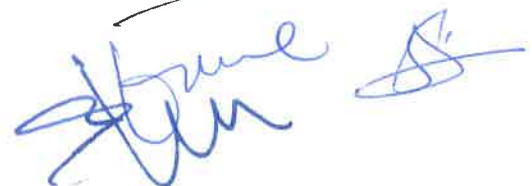
years in prison. In the result, I sentence the convict to 30 years in prison excluding the period of remand."

It was contended for the respondent that saying, "In the result, I sentence the convict to 30 years in prison excluding the period of remand," showed that the remand period had been taken into consideration. We have however noted that the period spent on remand was not mentioned in the allocutus prior to sentencing. It could be concluded that it was not established by the learned trial Judge. In our view, the learned trial Judge could not take into consideration a period that was not known to him and as such she did not comply with the mandatory requirement in **Article 23 (8) of the 1995 Constitution**. The sentence imposed in the circumstances was illegal and we, therefore, set it aside.

We shall now go about determining an appropriate sentence in the circumstances pursuant to Section 11 of the Judicature Act, Cap. 13 which gives this Court powers of the High Court in certain instances like determining an appropriate sentence. It was said for the appellant in mitigation of his sentence that; he was a first offender; he was of a youthful age when he committed the offence and was not mature enough to make a better decision; he may have been provoked by the victim whom he believed was using witchcraft against him; he had pleaded guilty and saved Court's time. He therefore asked for a lenient sentence.

However the following aggravating factors were raised by the prosecution that; the appellant had participated in the gruesome murder of the deceased who was hacked to death like an animal; he had exercised poor judgment when his belief in witchcraft led him to killing the deceased; he took a human life yet life is sacred and should be respected; the offence for which he was convicted was of a grave nature and could attract the maximum death penalty.

We have taken the above mitigating and aggravating factors into consideration. We observe that the appellant was of the very young age of 22 years at the time of commission of the offence and given a chance, he could reform and be useful to society. Further, he pleaded guilty albeit at a



much later stage than his other co-accused. We further observe that there is a need to maintain consistency while imposing sentences for similar offences. The guide to maintaining that consistency are the relevant decided cases. The Court of Appeal and the Supreme Court have in cases similar to the present appeal imposed sentences ranging from 26 years to 30 years.

For example in **Aharikundira Yustina vs Uganda, Supreme Court Criminal Appeal No. 0027 of 2015**, the appellant had brutally murdered her husband and cut off his body parts in cold blood. The Supreme Court set aside the death sentence imposed by the trial Court and maintained by the Court of Appeal. It substituted thereof, a sentence of 30 years imprisonment.

In **Kavulu Yokana Ssekanwagi vs. Uganda, Court of Appeal Criminal Appeal No. 0509 of 2013**, the Court of Appeal substituted a sentence of 28 years imposed by the trial Court with one of 23 years. The appellant had viciously attacked the victim with a stick and beat her to death.

In **Nuwagaba Fred vs. Uganda, Court of Appeal Criminal Appeal No. 0704 of 2014**, the Court of Appeal substituted a sentence of 47 years imposed by the trial Court with one of 26 years. The appellant had thrown a toddler in a pit latrine and it had thereafter died due to breathing difficulties.

However, the Courts have consistently been of the view that the convicts who plead guilty deserve some leniency as they are deemed to have saved Court's time. (**See: Kenyi James vs. Uganda, Court of Appeal Criminal Appeal No. 0100 of 2014**)

In view of the above stated sentencing principles and the relevant sentencing ranges, we find that a sentence of 23 years imprisonment is appropriate in the circumstances to show the abhorrence of society towards the appellant's actions. It has been repeated time and again that conflicts have to be resolved peacefully. Even when the appellant suspected the victim of using witchcraft he did not have to murder him in such a violent manner. He could have reported him to the authorities. However, we are cognizant of the appellant's young age of 22 years at the time of commission of the offence



in question which has persuaded us to impose the proposed sentence to give him a chance to reform.

It was established that the appellant was arrested on 17th December, 2013 and was convicted and sentenced on 4th May, 2017. Thus he had been on remand for 3 years, 4 months and 17 days. We shall deduct the said remand period leaving him to serve a term of 19 years, 7 months and 13 days from the date of conviction. This appeal would be so disposed of accordingly.

We so order.

Dated at Masaka this 9th day of Dec. 2019.

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Elizabeth Musoke

Justice of Appeal

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Ezekiel Muhanguzi

Justice of Appeal

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Remmy Kasule

Ag. Justice of Appeal