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**THE REPUBLIC OF UGANDA**  
**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**  
**CRIMINAL APPEAL NO. 571 OF 2014**

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

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**MUSANA RICHARD:.....APPELLANT**

**VERSUS**

**UGANDA:.....RESPONDENT**

*(An appeal from the decision of the High Court at Nakawa before His Lordship Hon. Justice Henry P Adonyo dated 30<sup>th</sup> May, 2014 in Criminal Session Case No. 227 of 2014)*

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**JUDGMENT OF THE COURT**

**Introduction**

This appeal arises from the decision of the High Court sitting at Nakawa delivered on 30<sup>th</sup> May, 2014 by Henry P. Adonyo, J in which the appellant was convicted on his own plea of guilty of the offence of murder contrary to sections 188 & 189 of the Penal Code Act and sentenced to 25 years imprisonment.

At the trial stage, the appellant together with his counsel successfully negotiated a plea bargain with the State Attorney Ms. Caroline Nabaasa which was introduced to the court. Having obtained confirmation of this fact from defence counsel on State Brief, Mr. Kafuko Ntuyo, the court received the plea bargaining agreement to form part of the record. The appellant was then allowed to take plea whereupon he pleaded guilty to the charges and a plea of guilty was entered.

The State Attorney narrated the facts of the case to the court as follows: *“the appellant and the deceased (Irene Nebohe) were in a relationship and have a child. They were both working as security guards but they developed a misunderstanding whereupon the appellant killed the*

5 *deceased who left behind a child of tender years. The injuries were well explained in the post mortem report on record as stab injuries. The cause of death was established as penetrating sharp force trauma."*

Upon ascertaining from the accused that the facts as stated were correct, he was convicted on his own plea of guilty for the offence of Murder contrary to section 188 and 189 of the  
10 Penal Code Act. The aggravating factors outlined in the plea bargain agreement were that the appellant inflicted a deep stab wound on the deceased; he used violence to sort out family disputes; prior to the murder he looked for the deceased from her relatives planning for his actions; and that the victim was a breast feeding mother of a 1<sup>1/2</sup> year old baby. In his submission in mitigation of sentence, the learned defence counsel stated as follows: the  
15 appellant readily pleaded guilty, he reported himself to the police and admitted the offence, he is remorseful, and he has a 2 year old child who needs to grow up with one of the parents. In his *allocutus*, the appellant prayed for leniency and informed court that by the time he killed the deceased, he had another wife who has children with whom she is suffering.

Subsequently, the appellant was sentenced to 25 years imprisonment as per the plea  
20 bargaining agreement.

Being dissatisfied with the above decision, he appealed to this Court on the following grounds;

1. *The learned trial Judge erred in law and fact when he imposed a harsh and excessive sentence of 25 (twenty five) years upon the appellant which caused a miscarriage of justice.*
- 25 2. *The learned trial Judge erred in law and fact when he passed a sentence of 25 (twenty five) years imprisonment upon the appellant without considering the time spent by the appellant on remand which caused a miscarriage of justice.*

5 At the hearing of this appeal, the appellant was represented by Mr.Sserunkuma Bruno on State Brief while Ms. Nelly Asiku a Senior State Attorney from the Office of the Director Public Prosecutions represented the respondent.

Counsel for the appellant sought leave to proceed against sentence only which was granted. He abandoned ground 1 after this Court put some questions to him about the principle that underpins plea bargain and only argued ground 2. Counsel submitted that the period of 9  
10 months spent on remand was not taken into account which was conceded to by counsel for the respondent who in addition prayed that the remand period be deducted from the 25 years agreed upon by the parties in the plea bargaining agreement.

The duty of this Court as a first appellate court is to re-evaluate the evidence on record and  
15 to re-consider the materials before the trial Judge and come up with its own conclusion. **See: Rule 30 of the Judicature (Court of Appeal Rules) Directions.**

Article 23 (8) of the Constitution provides as follows:

*"Where a person is convicted and sentenced to a term of imprisonment for an offence, any period he or she spends in lawful custody in respect of the offence before the  
20 completion of his or her trial shall be taken into account in imposing the term of imprisonment."*

We have carefully studied the court record and it is clear that the learned trial Judge, while sentencing the appellant, did not consider the period he had spent on remand. Having listed the aggravating and mitigating factors, he found as follows;

25 *"I have however taken mercy on this and accepted the recommendation of the plea bargaining agreement and do sentence him to 25 years. He is asked to control his anger and when he completes his sentence hopefully he will have learnt a lesson not*

5            *to take a life which is God given and irreplaceable. The accused may appeal against the sentence if he so wishes within 14 days.”*

The trial Judge by not taking into account the period the appellant had spent on remand contravened Article 23 (8) of the Constitution and therefore the sentence is illegal. We thus set it aside.

10        We note that the appellant's first ground of appeal which his counsel later abandoned was that the sentence was harsh and excessive which caused a miscarriage of justice. We are of the view that since counsel did not consult the appellant before abandoning this ground of appeal, it would cause an injustice to him if we do not consider it. In the premises, we will resolve that ground of appeal although it was not argued before us.

15        It is noteworthy that the sentence was arrived at in a plea bargain which has an elaborate process intended to protect the rights of an accused person pursuant to rule 12 of ***the Judicature (Plea Bargain) Rules, 2016*** (hereinafter called PBR). Under that rule, a plea bargain agreement is brought before a Judicial Officer who informs the accused person of his or her rights as listed under that rule and upon being satisfied that the accused understands  
20        them then the court follows the plea taking procedure and after the facts of the case as contained in the plea bargain agreement are read out to the satisfaction of court and confirmed by the accused, the agreement is executed by the accused with his or her full understanding of all matters. A plea bargain confirmation is also signed by all the parties in the presence of the judicial officer and it becomes part of the court record. It then becomes  
25        binding upon the prosecution and the accused and the court is obliged to impose the same upon the accused person.

Although PBR came into force on the 1<sup>st</sup> day of April 2016, almost 2 years after this case had been concluded by the trial court, we note that prior to its coming into force plea bargain was already being piloted in a number of courts and this case came under such pilot schemes.

5 The principles that underpin plea bargain which are followed in other jurisdictions were the ones being applied and are the very ones that were formulated into the current Rules.

We must observe that a plea bargain, among other benefits, gives an early opportunity for settlement of criminal cases thereby saving the time and resources that could have been spent in prosecuting the case in the same way a plea of guilty does. An accused person who  
10 opts to enter into a plea bargain does so with the hope of getting a more lenient sentence than what court would impose after a full trial. In our view that is the incentive which makes plea bargain attractive to accused persons. This presupposes proper representation by counsel who helps the accused person to understand the strength and weaknesses of the prosecution case if the matter goes for full trial and also brings out both the mitigating and  
15 aggravating factors which should guide the bargain while bearing in mind the range of sentences in similar offences. In practice this may not be the case and we believe that the Rules Committee had this in mind when it made appeal against severity of sentence one of the exceptions under rule 12 (1) (g) of the PBR.

In this case it would appear from the record that the appellant and his counsel were at  
20 variance on the sentence and that could have weakened his bargaining position. While counsel for the appellant told court that the aggravating factors outweighed the mitigating factors and so they recommended a sentence of 25 years imprisonment, his client (the appellant) was pleading for leniency. There is also no indication on the record that the trial Judge confirmed with the appellant whether he had agreed to the sentence of 25 years. He  
25 should have done so especially when the appellant pleaded for leniency upon his counsel submitting as though he was representing the state. No wonder the appellant was aggrieved that the sentence was harsh and excessive hence the first ground of appeal.

↳ We ourselves have looked at the range of sentences by this Court for similar offences where a full trial was conducted and we are of the view that the sentence of 25 years imprisonment  
30 in a plea bargain was harsh and excessive considering that the appellant saved the time and



5 the resources that could have been spent in prosecuting him by entering into a plea bargain agreement.

In ***Tumwesigye Anthony vs Uganda, Court of Appeal Criminal Appeal No. 046 of 2012***, where the appellant denied the offence, he was tried and convicted of murder and sentenced to 32 years. This Court sitting at Mbarara set aside the sentence and substituted it with 20  
10 years.

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

In ***Matovu Darausi vs Uganda, Court of Appeal Criminal Appeal No 428 of 2014*** and  
15 ***Kimera Zaverio vs Uganda, Court of Appeal Criminal Appeal No. 427 of 2014***, this Court reduced the sentences of the appellants for the offence of murder from life imprisonment to 18 and 17 years imprisonment respectively.

In ***Tom Sande Sazi Alias Hussein Sadam vs Uganda, Court of Appeal Criminal Appeal No. 0087 of 2014***, the appellant was convicted of the offence of murder on his own plea of  
20 guilty and sentenced to 18 years imprisonment. On appeal, this Court upheld the sentence.

It is clear from the above authorities of this Court where there were full trials and where the appellant pleaded guilty that the sentences were below the 25 years agreed upon in a plea bargain in this case. We therefore find the sentence of 25 years imprisonment harsh and excessive and out of range with sentences in similar offences. In the circumstances, we set  
25 it aside and invoke our powers under section 11 of the Judicature Act to sentence the appellant to an appropriate sentence upon considering the aggravating and mitigating factors as listed in the plea bargain agreement.



5 The aggravating factors were that the appellant inflicted a deep stab wound on his girlfriend; used violence to sort out family disputes; looked for the deceased from her relatives thus planning for his actions, and the deceased was a breastfeeding mother of a 1½ year old child.

The mitigating factors were that the appellant readily admitted the offence and reported himself to police; he also readily pleaded guilty and he is repentant and remorseful. Further  
10 that the deceased left a 2 year old child who needed to grow up with him.

Considering all the above factors, we find a sentence of 18 years imprisonment appropriate. Pursuant to article 23 (8) of the constitution, we deduct the period of 9 months the appellant had spent on remand and sentence him to 17 years and 3 months imprisonment. The sentence is to be served from 30/05/2014, which is the date of his conviction.

15 We so order.

Dated at Kampala this 22<sup>nd</sup> day of June 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**