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THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT JINJA

[CORAM: OWINY- DOLLO, DCJ; MUSOTA and TUHAISE, JJA]

CRIMINAL APPEAL NO. 286 OF 2015

(Arising from the judgment of the High Court of Uganda at Jinja, (Basaza J.) in Criminal Session Case No. 208 of 2014)

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ABITI MOSES APPELLANT

VERSUS

UGANDA RESPONDENT

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JUDGMENT

Background

The appellant was indicted, tried, and convicted, of the offence of murder c/s 188 & 189 of the Penal Code Act; and was sentenced to 23 years imprisonment. The facts of the case were that on 1st January 2014, at Kyampisi village in Kayunga District, the appellant was at a bar with one Chadiru Monica (herein after referred to as the victim) who was known as his girl friend. At around 4:00 pm of the same day, he was seen pulling the victim out of the disco hall; as she resisted him. Soon thereafter, the victim's body was discovered lying behind the disco hall; with injuries in her private parts.

The report from the post mortem examination carried out at Kayunga Hospital revealed that her large and small intestines were pulled out through her vagina and anus. The cause of death was established to be the injuries that were inflicted on her. Medical examination of the appellant showed that he was of normal mental disposition. The evidence adduced at the trial was that the victim was last seen in the company of the appellant.

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5 **Representation**

At the hearing of the Appeal, the appellant was represented by Counsel Munyamasoko on state brief, while the respondent was represented by Counsel Macrina (Principal State Attorney).

Ground of Appeal

10 At the hearing of the Appeal, counsel for the appellant sought leave to amend the Memorandum of Appeal to reflect one ground only; to wit that: *'the sentence of 23 years' imprisonment was harsh and manifestly excessive.*' This application for amendment of the grounds of appeal was granted; and so, Counsel addressed Court on only the ground on
15 sentence.

The case for the appellant

Counsel for the appellant submitted that the sentence of 23 years was illegal given that the appellant pleaded guilty; and there was a plea bargain in which a sentence of 22 years was agreed upon during the
20 process. Counsel pointed out that the appellant had spent 11 months on remand before conviction. Counsel further argued that the **process of the plea bargaining was illegal considering that the interpreter did not sign as required.** Counsel therefore prayed that the whole process be declared a nullity and be set aside.

25 **Case for Respondent.**

Counsel implored this Court to uphold the sentence imposed. Counsel stated that this Court as the 1st appellate Court in the matter, has the duty to re-evaluate the evidence and make up its conclusion after perusal of the plea bargaining agreement. Counsel pointed out that in
30 the plea bargain agreement on record, the appellant himself signed

5 this plea bargain agreement twice. Counsel thus prayed that this Court upholds the 22 years sentence.

Court's Consideration.

It is trite law that sentencing is a matter for the discretion of the trial Court. Thus, an appellate Court can only interfere with the exercise of
10 discretion if the sentence imposed is manifestly excessive, or is so low as to occasion miscarriage of justice. Court may also interfere where the trial Court ignores to consider an important matter or circumstance it ought to have considered before imposing the sentence; or where the sentence imposed is wrong in principle (See
15 *Kiwalabye Bernard v Uganda; Criminal Appeal No.143 of 2001 (unreported)*).

In cases of plea of guilty, as in the instant case, no appeal lies there from; except where the legality of the plea or sentence is in issue. Plea bargain serves to benefit both the accused person and the prosecution. It enables an accused person to face lesser charges than
20 he or she would have, had there been no such bargain. The other benefit is that the resultant sentence would be less than what the Court would otherwise have imposed, had the conviction resulted from a full trial. The law seizes the trial Court with the responsibility to guide the plea bargain process; and ensure that the resultant
25 agreement is devoid of vitiating factors as would render the process a nullity. Where a plea bargain outcome results from some misunderstanding, by the accused person, of the consequence of the bargain, then the plea bargain is defective; and must be revoked.

On the evidence, the Appellant in the instant case before us
30 underwent a plea bargain process that resulted in an agreement he endorsed. It is this, which the trial Court relied upon to convict and

5 sentence him; after he pleaded guilty. On the face of it, as is
manifested in the record of the proceedings, the learned trial judge
established from the Appellant that he understood the plea bargain
process, and had only signed on the memorandum of agreement after
he was satisfied with the content of the memorandum of agreement.
10 He actually pointed out to the learned trial judge two places on the
memorandum of agreement, where he signed.

That may well be so; but there is this nagging fact which seems not to
have been addressed by the learned trial judge. There is indication
that there was need for an interpreter/translator; but under that
15 provision, there is neither a name nor signature of such a person. We
should point out that 'plea-bargain' is quite a commendable
innovation and intervention in the criminal justice system. However,
we should equally point out that this worthy judicial enterprise can be
abused, and rendered so grossly defective as to instead achieve the
20 very converse of the purpose for which it is intended; hence result in
an abuse of the due process. It is thus the duty of the trial Court to
ensure that the process was devoid of such flaw.

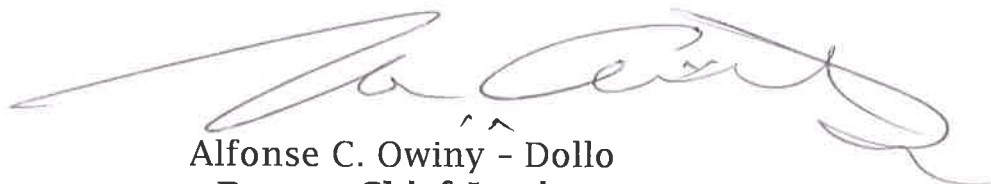
The learned trial judge in the instant matter ought to have established
to Court's satisfaction whether the accused person before her had
25 understood the language used in the document to which he had
appended his signature. She should have sought clarification from the
learned counsel for the accused what language had been used to
communicate to the accused during the plea bargain process. We also
notice that the specimen form for the plea bargain agreement has
30 provision for an interpreter/translator who has taken oath, and whose
attestation as to the fact that the accused person understood what

5 he/she was agreeing on, is a prerequisite. Accordingly then, this glaring absence of attestation by a translator/interpreter is fatal to the whole plea bargain process, and the resultant conviction and sentence. Thus, we cannot allow the conviction and sentence to stand.

10 In the result, we quash the conviction, and set aside the sentence. We also order that the Appellant face a new trial. We further direct the High Court at Jinja to ensure that the Appellant is accorded the new trial at the very earliest opportunity; as any further delay would occasion gross injustice to him.

Dated at Jinja this 4th day of Feb, 2019

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Alfonse C. Owiny - Dollo
Deputy Chief Justice

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Stephen Musota
Justice of Appeal

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Percy Night Tuhaise
Justice of Appeal