THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT MBALE

CRIMINAL APPEAL NO.477 OF 2015

1. **KIRYA WILSON**
2. **ZIRABA SABASI::APPELLANT**

VERSUS

UGANDA::RESPONDENT

(Appeal from the decision of the High Court of Uganda at Jinja before Catherine Bamugemereire, J dated 28th November, 2014 in High Court Criminal Session No.209 of 2012)

CORAM: HON. MR. JUSTICE F.M.S EGONDA-NTENDE, JA

HON. MR. JUSTICE CHEBORION BARISHAKI, JA

HON. MR. JUSTICE MUZAMIRU MUTANGULA KIBEEDI, JA

JUDGMENT OF COURT

This is an appeal against the decision of Catherine Bamugemereire, J in High Court Criminal Case No.209 of 2012 at Jinja wherein the appellants were convicted of the offence of murder contrary to sections 188 and 189 of the Penal Code Act and sentenced to imprisonment for the rest of their lives.

The facts as accepted by the learned trial Judge were that on or about the 4th day of February, 2010 at Itamya Village, Kidera Parish, Buyende Sub-County in

Buyende District, the accused persons, Wilson Kiirya and Ziraba Sabasi murdered Sarah Nangobi and threw her body in Lake Kyoga. Subsequently when a dead body was seen floating on the waters of Lake Kyoga, the residents of the area were called to identify it and it was found to be that of the deceased, Sarah Nangobi.

The first murder suspects were the appellants with whom the deceased had had a land wrangle. The wrangle stemmed from A2, Ziraba Sabasi's selling off of his late brother Waibi's piece of land to A1, Kirya Wilson. The sale did not go down well with the late Waibi's daughter, Sarah Nangobi who reported the matter to the LC111 Chairperson. The appellants had since then issued death threats to the deceased. The two were arrested, charged, convicted and sentenced to life imprisonment.

Being dissatisfied with the said decision, the appellants appealed against conviction and sentence setting forth the following grounds;

1. *That the learned trial Judge erred in law and in fact when she failed to properly evaluate the evidence on the record and relied on insufficient, uncorroborated evidence of previous threats and motive and came to a wrong conclusion that the appellants murdered the deceased.*
2. *The learned trial Judge erred in law and in fact when she found that the 1st appellant's charge and caution statement was obtained voluntarily and relied on it to convict and sentence the appellants which caused a miscarriage of justice.*

3. *The learned trial Judge erred in law and in fact when she found that the 1st appellant's charge and caution statement was obtained voluntarily, rejected the 1st appellant's medical books and relied on it to convict and sentence the appellants which caused a miscarriage of justice.*

4. *The learned trial Judge erred in law and in fact when she sentenced the appellants to imprisonment for the rest of their entire life without taking into account the period spent on remand which was illegal and excessive in the circumstances.*

At the hearing of the appeal, Ms. Luchivya Faith appeared for the appellant while the respondent was represented by Ms. Nabisenke Vicky, Assistant DPP. Counsel informed Court that they had filed written submissions which were adopted by court.

On ground 1 of the appeal, counsel for the appellant submitted that the learned trial Judge relied on the evidence of PW2 yet the said evidence had no direct link to the participation of the appellants in the murder. That PW1 had testified that A1, Kirya Wilson destroyed her crops and threatened to cut the deceased but the alleged threats were never reported to Police. Counsel further submitted that PW3 stated that they were informed by a member of the LC111 Committee that the deceased had been murdered and dumped in water. According to counsel, this was hearsay evidence as the said member of the committee was never produced in Court nor did PW3 mention the name. Counsel stated that it was clear that the learned trial Judge based her conclusions on hearsay,

circumstantial inferences and suspicions as put across by the prosecution. She referred to ***Byaruhanga Fodori V Uganda (2004) UGSC 24*** for the proposition that the Court must before deciding a conviction find that the exculpatory facts were incompatible with the innocence of the accused.

As to whether the 1st appellants charge and caution statement had been made voluntarily, counsel for the appellant submitted that A1, Kirya Wilson testified that he admitted the offence because he was tortured and hospitalized. That a medical book showing the injuries he suffered was presented to Court but the same was rejected for lack of áuthenticity. To counsel, this caused a miscarriage of justice because the medical book was certified by the prison authorities. Counsel further submitted that the PW5, DIP, Micheal Gabona who obtained the charge and caution statement was asked about the tribe of A1 and he informed Court that the tribe of A1 was unclear but he seemed to have said he was a musoga and to counsel, this ought to have raised suspicion before the trial Judge but court discarded it. She submitted that the learned trial Judge relied on discredited evidence of suspicions to find that the confession of A1 was corroborated.

On ground 3 of the appeal, counsel submitted that the trial Judge ignored major contradictions in the prosecution evidence to the prejudice of the appellants. She pointed out that while PW2, DIP, Micheal Gabona initially testified that A2, Ziraba Sabasi had informed him that both appellants had murdered the deceased, he later testified that A2, Ziraba Sabasi had given 600,000/= to A1,

Kirya Wilson to kill the deceased. Counsel added that this evidence was contradicted by PW4, D/Sgt Kirunda Steven who testified that he was only told about the sum of 300,000/= by PW5, DIP, Micheal Gabona. According to counsel, this evidence was contradictory as to whether the actual sum was 600,000/= as stated by PW2 or 300,000/= as stated by PW4.

On ground 4, counsel submitted that the appellants were sentenced to imprisonment for the rest of their lives without taking into account the period spent on remand. That the learned trial Judge merely stated that the time the suspects had spent on remand had been taken into account without categorically stating the specific period which in counsel's view was illegal. She prayed for the conviction to be quashed and the sentence sent aside.

Counsel for the respondent admitted that none of the prosecution witnesses witnessed the murder of the deceased and their evidence implicating the appellants was majorly circumstantial and save for the charge and caution statement. Counsel submitted that PW1, Nalubega Kasubo testified that A1 had threatened to cut the deceased and the two appellants had been stalking and hunting for the deceased like an animal. That PW3 testified that the two appellants threatened that if the deceased defeated them, they would find another way out. She relied on ***Akbar Hussein Godi V Uganda, Court of Appeal Criminal Appeal No.62 of 2011*** for the proposition that evidence of previous threats is a relevant consideration in determining the guilt or innocence of the accused.

Counsel further submitted that the circumstances of this case proved that the appellants had the motive to murder the deceased because they had on numerous occasions threatened to kill her and indeed when she died there was no other inference to draw other than the fact that it was the appellants who had murdered her.

On grounds 2 and 3, counsel submitted that the 1st appellant made a charge and caution statement before PW5, DIP Micheal Gabona in a room where they were only 2 people and in Luganda, a language that A1 admitted to understand. Further that he made the statement voluntarily and willingly, with no promise, no force and no intimidation. She added that PW5 testified that the 1st appellant was not beaten and that there was no inducement to confess, no armed person was in the vicinity and that A1 had no physical injuries.

Counsel further submitted that A1, Kirya Wilson as DW1 in the trial within a trial denied having voluntarily made the confession and stated that he had been beaten and forced to admit the crime. However, A2, Ziraba Sabasi as DW2 in the trial within a trial stated that A1 was never beaten at Buyende and this corroborated the prosecution evidence that A1's statement was taken voluntarily without any torture. She further submitted that the appellants were arrested on 8/08/2012 and the charge and caution statement taken on 10/2/2012. PF24 which was admitted in evidence as Exhibit P2 shows that A1 was examined on 12/02/2012 and no injuries were found on his body. This was proof that A1 was

never tortured or beaten prior to or during the recording of the charge and caution statement and he thus willingly and voluntarily made the confession.

Counsel further testified that apart from the confession of A1, Kirya Wilson, there was plenty of other circumstantial evidence that the learned trial Judge relied on to convict the appellants. These included A1's admission of guilt to PW2 and the evidence of motive and prior threats uttered to the deceased. Counsel added that the issue of contradictions in the prosecution case as discussed by counsel for the appellant was never raised in their Memorandum of Appeal hence offended the rules of this Court. She relied on rule 66(2) of the Judicature (Court of Appeal) Rules.

On ground 4 of the appeal, counsel submitted that the maximum sentence for the offence of murder is death and the Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013 provides for the sentencing range in capital offences and the starting point being 35 years. She added that the trial Judge was under no legal obligation to categorically state and deduct the specific period because the law at the time the appellant was convicted only required Courts to show that they had taken into consideration the time spent on remand. Counsel prayed that the appeal be dismissed and the conviction of the appellants be upheld.

We have studied the record of appeal and considered the submissions of both Counsel and the authorities cited to us.

This Court is required to re-appraise the evidence and come up with its own inferences on all questions of fact and law. ***See rule 30(1) of the Rules of this Court and Kifamunte Henry V Uganda, Supreme Court Criminal Appeal No.10 of 1997.***

The appellants in their Memorandum of Appeal set forth 4 grounds of appeal which did not include the issue of contradictions in the prosecution case. However, in her written submissions, counsel argued ground 2 and 3 together as they appear in the memorandum of appeal and further formulated another ground on contradictions which she argued as ground 3. This offended rule 66(2) of the Judicature (Court of Appeal) Rules which provides that;

> *"The memorandum of appeal shall set forth concisely and under distinct heads numbered consecutively, without argument or narrative, the grounds of objection to the decision appealed against, specifying, in the case of a first appeal, the points of law or fact or mixed law and fact....."*

If counsel for the appellant wished to amend her memorandum of appeal, she should have filed an amendment which she did not do. We will consider the grounds as raised in the memorandum of appeal.

On ground 1 of the appeal, the learned trial Judge is faulted for failing to properly evaluate the evidence on record hence relying on insufficient, uncorroborated evidence of previous threats and motive coming to a wrong conclusion that the appellants murdered the deceased.

Counsel for the appellant submitted that the learned trial Judge relied on the evidence of PW2 yet the said evidence had no direct link to the participation of the appellants in the murder and the threats were never reported to Police. Counsel for the respondent replied that it was true none of the prosecution witnesses was a witness to the murder of the deceased and their evidence implicating the appellants was mainly circumstantial.

While dealing with this issue, the learned trial Judge had this to say;

> *"I therefore find that based on the previous persistent threats made to the deceased by both accused and the confession which was made by Wilson Kirya which was corroborated by the manner in which the body was discovered, with a boulder around her torso and ropes tied tight so that she stood no chance of resuscitation, all point to the two accused as killers. The totality of the circumstances surrounding this case lead to no other inference except that it is the two accused who planned, executed and disposed of the body of the late Sarah Nangobi."*

The prosecution evidence which the learned trial Judge relied on to convict the appellant was; PW1, Nalubega Kasubo, mother to the deceased testified that she knew the appellants. A2, Ziraba Sabasi was her brother in law and A1, Kirya Wilson bought their land and they were chasing them from that land. Kirya Wilson destroyed her crops on the said land and threatened to cut up her daughter whom he was hunting like an animal. All those actions were aimed at getting the deceased and PW1 off the disputed land. At the material time, PW1

had looked for her daughter for two days until she was told there was a body on the lakeshore. That when she went to see the body, she identified it as of her daughter. PW1 also testified that A2, Ziraba Sabasi was threatening them and destroyed the potatoes in her daughter's garden.

In cross examination, she stated that the appellants were stalking her daughter before she died but did not see them kill her.

PW2, Geoffrey Lukuwa, boyfriend to the deceased testified that he was one of the suspects in the killing of the deceased and had recorded a statement and was even detained. That many people were arrested although the appellants were arrested first. He added that while in the police cells, A2, Ziraba Sabasi told them that the appellants had murdered the deceased and he was willing to die for the land that is why the deceased had to die. That Ziraba said he had given 600,000/= to Kirya Wilson to murder the deceased.

PW3, Lawrence Senjobe testified that he was the Chairperson LC111 Court and in 2011 Sarah complained to LCIII that her uncle Ziraba Sabasi was selling off all their land. They entertained the matter and visited the land in issue at Itamya. Ziraba had sold the land to Kirya and one Wabwire and they told Ziraba to cease selling off and using the land. They were yet to decide the matter, only to receive information from one member of the committee that Sarah had been murdered and dumped in Lake Kyoga. He added that appellants threatened that if the deceased defeated them they would find another way out and that court was merely paper and pen.

In cross examination, he stated that he saw the sale agreement between A1, Kirya Wilson and A2, Ziraba Sabasi. That he also saw Wabwire's agreement as well. He never saw who killed Sarah Nangobi.

PW4, 24819 D/Sgt Kirunda Steven testified that after retrieving and identifying the body of the deceased, people began whispering that Ziraba Sabasi an uncle to the deceased and one Kirya Wilson were suspects in the murder of the deceased because the two had a land wrangle with the deceased. Intelligence went down to identify their homes and they were arrested. When the appellants were interrogated. Ziraba Sabasi said they had done it with Kirya Wilson. He added that Ziraba told him that the two appellants beat the deceased to death whom they found in her potato garden in the evening. That thereafter, Kirya Wilson stripped her naked and hid the clothes and the sticks they used to beat the deceased to death. Efforts were made to trace the clothes and sticks in vain.

During cross examination, he stated that Ziraba Sabasi told him about the 300,000/- and he never got from him the name of the person who killed the deceased.

We have reviewed the evidence of the above witnesses and find that PW1, Nalubega Kasubo's evidence was based on a land wrangle and previous threats that she claimed the appellants told her about. However, she stated that she never saw the appellants kill the deceased.

PW2, Geoffrey Lukuwa stated that although many people were arrested on suspicion of murdering the deceased, while in the Police Cells, Ziraba had told

them that the appellants had murdered the deceased. However, this evidence was not corroborated by any other person who was with him in the Police Cells. Secondly, there is no account of release of other suspects since he narrated that many of them were arrested.

PW3, Lawrence Senjobe stated that the deceased complained to the LC111 Court that her uncle Ziraba Sabasi was selling off all their land, the Committee entertained the matter and visited the land at Itamya however we note that no evidence was produced in Court to show that the Committee ever entertained the matter involving a land wrangle between the appellants and the deceased. Secondly, he stated that he saw the land sale agreement between the appellants and the land sale agreement between the 2nd appellant and Wabwire. However, no evidence was produced to back up this assertion. PW3, too never saw who killed he deceased.

PW4, 24819 D/Sgt Kirunda Steven acted on mere suspicion to arrest the appellants because he stated that the people began whispering that Ziraba Sabasi an uncle to the deceased and one Kirya Wilson were suspected because the two had land wrangles with the deceased.

The judgment shows that the trial judge based her decision to convict the appellants on circumstantial evidence of alleged threats made to the deceased by the appellants. Circumstantial evidence is susceptible to fabrication and before a court draws inference of guilt from circumstantial evidence, it has to be sure that there are no co existing circumstances which would weaken or destroy

the inference of guilt. Circumstantial evidence must prove the guilt beyond reasonable doubt. See ***Katende Semakula v. Uganda [1995] UGSC 4***

The accused should have been put to the scene of crime. The Supreme Court in ***Bogere and another V Uganda, Criminal Appeal No.1 of 1997*** that;

> *"What then amounts to putting an accused at the scene of crime? We think that the expression must mean proof to the required standard that the accused was at the scene of crime at the material time."*

We find that the learned trial Judge ought not to have relied on the above evidence to convict the appellants as it was insufficient evidence to place the accused at the scene of crime, secondly, the evidence of PW4, 24819 D/Sgt Kirunda Steven was merely hearsay evidence.

Regarding the allegation of previous threats, PW1, Nalubega Kasubo, mother to the deceased testified that Wilson Kirya destroyed her crops and threated to cut her daughter and was hunting for her like an animal. She added that Ziraba Sabasi was also threatening them and had destroyed the potatoes in her daughter's garden.

PW3, Lawrence Senjobe testified that the appellants and the deceased had serious land wrangles and the appellants threatened that if the deceased defeated them, they would find another way out and that Court was a mere paper and pen. He added that they did not take their threats lightly and this matter was reported to police.

The appellants denied ever having any land wrangles with the deceased.

In ***Waihi and anor V Uganda (1968) E.A 278,*** Spry J held at page 280 that:

> *"Evidence of a prior threat or of an announced intention to kill is always admissible evidence against a person accused of Murder, but its probative value varies greatly and may be very small or even amount to nothing. Regard must be had to the manner in which a threat is uttered, whether it is spoken bitterly or impulsively in sudden anger or jokingly, and the reason for the threat, if given and the length of time between the threat and the killing are also material. Being admissible and being evidence tending to connect the accused person with the offence charged, a prior threat is we think capable of corroborating a confession."*

Court further stated that

> *"Evidence of previous threats can be used to corroborate evidence to implicate an accused person according to the circumstances of the case. The evidence of previous threats that was relied upon by the trial Judge is hearsay evidence which is inadmissible in the first place and the trial Court should neither have admitted it nor relied upon it."*

In other words evidence of a prior threat cannot stand on its own. It can only corroborate other evidence. The prosecution evidence did not establish when the alleged threats were made to the deceased and further did not show whether those threats from both appellants were ever reported to police by PW1, Nalubega

Kasubo. PW3, Lawrence Senjobe stated that they did not take the appellants' threats lightly so the matter was reported to police however, no evidence of a Criminal Reference Number was produced to corroborate his evidence. For this reason, we cannot rely on mere allegations by the prosecution.

Further PW3, Lawrence Senjobe stated that it had been many years and so he could not recall the date when the threats were uttered or the exact words used in the threats. In a persuasive decision of ***Uganda V Aggrey Kiyingi and Others HCSC No.030 of 2006,*** the High Court held that past threats on the deceased by his or her assailant can be good evidence to convict. However, there must be sufficient proximity between the threats and the occurrence of the death in order to form a transaction. The threats in that case were too remote for they had occurred 2 years ago.

In this appeal, the evidence of PW3, shows that there was no close proximity between the threats and the occurrence of the death in order to form a transaction.

We therefore, find that the prosecution evidence on previous threats and motive was too weak to sustain a conviction.

Ground 1 of the appeal succeeds.

The learned trial Judge is faulted under grounds 2 and 3 for finding that the 1st appellant's charge and caution statement was obtained voluntarily. She is also faulted for rejecting the 1st appellant's medical book which rejection according to his lawyer caused a miscarriage of justice because the book had been certified

by the prisons medical personnel and it showed that the 1st appellant had suffered injuries because of the torture.

In reply counsel for the respondent submitted that the 1st appellant made a charge and caution statement before PW5, DIP Micheal Gabona in a room where they were only 2 people and in Luganda, a language that A1 admitted to understand and he made the statement voluntarily and willingly, with no promise, no force and no intimidation.

The trial Judge's finding on this issue was;

> *"In carefully analyzing the arguments of both counsel, I followed the sequence of confession, previous threats and motive. In order to prove the confession the prosecution relied on a charge and caution statement. The two fold validity test of a confession is whether the statement was voluntarily made and whether it was made to an officer who is above the rank of an Assistant Inspector of Police (AIP)... I have not found any evidence to suggest that Kirya Wilson was tortured. The statement by Kirya was made voluntarily and it contains details which were confirmed on the body of the deceased such as that she was killed and a boulder wrapped round her torso to ease the drowning of her body. Secondly an officer of AIP and above who was an authorized officer took the statement. I therefore find the statement to be admissible."*

Section 24 of the Evidence Act provides that a confession made by an accused person is irrelevant if the making of the confession appears to the Court, having

regard to the state of mind of the accused person and to all the circumstances, to have been caused by any violence, force, threat, inducement or promise calculated in the opinion of the Court to cause an untrue confession to be made.

It is trite law that when the admissibility of an extra-judicial statement is challenged then the objecting accused must be given a chance to establish, by evidence, his grounds of objection. This is done through a trial within a trial. The purpose of the trial within a trial is to decide, upon the evidence of both sides, whether the confession should be admitted. ***See Amos Binuge & Others v Uganda, Supreme Court Criminal Appeal No.23 of 1989***

Where an accused person objects to the admissibility of a confession on the ground that it was not made voluntarily, the Court must hold a trial within a trial to determine if the confession was or was not caused by any violence, force, threat, inducement or promise calculated to cause an untrue confession to be made. In such trial within a trial, as in any criminal trial, the onus of proof is on the prosecution throughout. It is for the prosecution to prove that the confession was made voluntarily, not for the accused to prove that it was caused by any of the factors set out in section 24 of the Evidence Act. See ***Supreme Court Criminal Appeal No.39 of 2003, Walugembe Henry & Others V Uganda*** and ***Rashidi Republic (1969) EA 138.***

The record of appeal shows that the learned trial Judge conducted a trial within a trial. She delivered her ruling but the said ruling was not part of the record that was availed to this Court. However our reading of the record shows that the

learned trial Judge admitted the charge and caution statement as Exh P7 and Exh P8.

During the trial within a trial, PW2, DIP, Micheal Gabona testified that he obtained a charge and caution statement from Wilson Kirya and he did not have any injuries at all. There was no one in the vicinity, the statement was read back to him and he signed on each page. He added that he then translated the statement in Luganda because the A1, Wilson Kirya said he understood Luganda. Further that the tribe of A1 was unclear but he seemed to have said he was a musoga.

DW1, Wilson Kirya testified that when he was taken to make a statement, he was beaten by Umaru and another LDU. He was taken to Buyende Police on 10th February, 2012 when he could hardly walk and his shirt was full of blood. That he was taken to record his statement and didn't know who recorded his statement but had admitted the offence due to having been tortured.

DW2, Sabasi Ziraba testified that he made 2 statements. The first statement was recorded at Kidera and the next statement was recorded at Buyende. That in Kidera Police cells he was tortured and hit on the legs but was not tortured at Buyende. He added that they tortured A1 first at Kidera where he was beaten and it was police that tortured him using sticks from the nearby bushes. They wanted him to admit that he was involved in the disappearance of the deceased.

The law governing retracted and repudiated confessions was stated in ***Tuwamoi V Uganda (1967) EA 84***, where Court held that;

"A trial Court should accept any confession which has been retracted or repudiated with caution and must, before founding a conviction on such a confession, be fully satisfied in all circumstances of the case that the confession is true. The same standard of proof is required in all cases and usually a court will only act on the confession if corroborated in some material particular by independent evidence accepted by the Court. But corroboration is not necessary in law and the Court may act on a confession alone if it is satisfied after considering all the material points and surrounding circumstances that the confession cannot but be true."

A1, Kirya Wilson testified that because he was tortured, his legs and shoulder joints became swollen and he was taken to Mulago Hospital in Kamuli where he spent 4 days. Further that there was an exercise book used for recording his medical treatment with a stamp of a medical officer.

The learned trial Judge refused to allow the tendering in of the A1's medical book as an exhibit on grounds that it had not been vouched for either by a Prison Officer explaining its background or the proper original book being found. On the other hand prosecution tendered in PF24 to be used as evidence in the trial within a trial and although defence counsel objected for the reason that the Medical Officer was not in Court to tender it in, the judge admitted it. In her words, she stated as follows;

"PF24 relates to a mandatory examination of the accused. It is the accused and his morphology which is in issue. The medical form is relevant and admissible. Marked Exh P1 in the TWAT."

Having refused to admit A1's medical book as an exhibit, the judge should not have allowed the state to tender in PF24 because the same was not tendered in by the medical officer who examined the accused. We find that the trial Judge flaunted the procedure governing the tendering in of exhibits in Court which prejudiced the appellant.

In convicting the appellants, the learned trial Judge based her conviction on the previous threats and the confession of A1, Kirya Wilson which in her view was corroborated by the manner in which the body was discovered.

The testimony of A1, Kirya Wilson was corroborated by the testimony of A2, Sabasi Ziraba that indeed A1 was tortured. We therefore find no merit in the learned trial judge's finding that the 1st appellants' charge and caution statement was obtained voluntarily.

On ground 4 of the appeal, the learned trial Judge is faulted for sentencing the appellants to imprisonment for the rest of their entire life without taking into account the period spent on remand which rendered the sentence illegal. Counsel for the appellant further submitted that the sentence was in the circumstances of the case excessive.

That while passing the sentence, the learned trial Judge merely stated that the time the suspects have spent on remand has been taken into account without categorically stating the specific period which in her view was illegal.

The issue here is whether the provisions of Article 23(8) of the Constitution apply to a sentence of life imprisonment. In ***Magezi Gad V Uganda, Supreme Court Criminal Appeal No.17 of 2014*** which was cited with approval in ***Opolot Justine and anor V Uganda, Supreme Court Criminal Appeal No.31 of 2014*** Court stated as follows;

> *"We are of the considered view that like a sentence for murder, life imprisonment is not amenable to Article 23(8) of the Constitution. The above Article applies only where sentence is for a term of imprisonment i.e a quantified period of time which is deductible. This is not the case with life or death sentences."*

We find that Article 23(8) of the Constitution does not apply to sentences of life imprisonment as was the case in the present appeal.

Ground 4 of the appeal fails.

In the result, the appeal succeeds. We quash the appellants' conviction and set aside the sentences. The appellants should forthwith be released from prison unless they are being held on other lawful charges.

We so order.

Dated at Mbale this.....15th.....day of.....September.....2020

.....

HON. MR. JUSTICE F.M.S EGONDA-NTENDE

JUSTICE OF APPEAL

.....

HON. JUSTICE CHEBORION BARISHAKI

JUSTICE OF APPEAL

.....

HON. MR. JUSTICE MUZAMIRU MUTANGULA KIBEEDI

JUSTICE OF APPEAL