5

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPAL

CRIMINAL APPEAL NO. 153 OF 2012

1. **MUGANGA RICHARD**
2. **BWENGESA PAUL**
3. **NAKIGANDA ANNET**
4. **NASSIMBWA BABRA**
5. **KALULE TADEO**
6. **RUJAGA DONOZIYO...APPELLANTS**

10

VERSUS

15 **UGANDA...RESPONDENT**

(Appeal from the judgment, conviction and sentence of the High Court of Uganda at Mpigi before Hon. Lady Elizabeth Ibanda Nahamya dated 4th May, 2012 in Criminal Case No. 106 of 2010.)

20 **CORAM: Hon. Mr. Justice Kenneth Kakuru, JA**

Hon. Mr. Justice F.M.S Egonda -Ntende, JA

Hon. Mr. Justice Christopher Madrama, JA

JUDGMENT OF THE COURT

The appellants on 20th July, 2012 were convicted of the offence of Murder contrary

25 to *Sections 188* and *189* of the Penal Code Act (CAP 120) in High Court *Criminal Case No. 106 of 2010* by Hon. Lady Justice Elizabeth Ibanda Nahamya and were each sentenced to 60 years imprisonment.

5 **Brief background**

The facts as accepted by the learned trial Judge are that, Bwengesa Paul (A2) had many children from different wives. Kasozi Gerald the deceased was one of them and he was a progressive son. At one point in time, Kasozi, together with his brother PW8 bought 40 acres of land from their father A2. He fenced of the land thereby 10 denying the family access to the land. This included the water source. This did not go well with A2, who developed a grudge against the deceased. In the month of March 2009, one of A2's sons, called Nsamba (a stepbrother to the deceased), died. A2 told several people that it is the deceased who caused the death of Nsamba. The late Nsamba was A3's husband. A2 also told several people including his daughters 15 that he would kill the deceased in revenge. A3 also used to tell people that the deceased would not live for long.

On 18th June, 2009, all the appellants were seen seated together discussing something in A2's plantation. During the night of the same day, the house of the deceased was attacked and he was cut to death. He had slept in the house with his 20 wife and children. During the attack, the deceased cried *"Rujaga, why are you killing me?"* The attackers had torches which they kept flashing during the attack. With the aid of the light from the torches, the deceased's wife and children recognised three of the four assailants namely Rujjaga Donosio (A6), Kalule Tadeo (A5) and Muganga Richard (A1).

25 The next day, a post-mortem was conducted and established the cause of death as deep head injury and other multiple cuts on the body. When the body was removed from the scene, a blood stained cap was recovered. People identified it as belonging to A1. A1 is a brother to Nakiganda Annet (A3). A3 is the widow of the late Nsamba.

On the day when the deceased was killed, Nassimbwa Babra (A4) who is A2's wife 30 locked the house and disappeared for two days and did not attend the burial of the

5 deceased. On 1st July 2009, A1 was arrested and he made a confession implicating himself and all the other appellants which led to their subsequent arrests on various dates. A5 also made a charge and caution statement which implicated him, Rujjaga and all the appellants. He led Police to recover a small hoe which is said to have been used for the murder. The appellants were indicted, tried, convicted of the 10 offence of murder and sentenced each of them to 60 years imprisonment.

Being dissatisfied with the decision of the High Court they appealed to this Court on the following grounds;-

1. *That the learned trial Judge erred in law and fact when she convicted the appellants basing on generalization and presumptions not supported by* 15 *conclusive evidence.*
2. *The learned trial Judge erred in law when she disregarded the defences of the appellants and exhibited bias against them throughout the trial.*
3. *The learned trial Judge erred in law and fact when she improperly and wrongly evaluated evidence from the prosecution and defence and came to wrong and* 20 *biased conclusions to the prejudice of the appellants.*
4. *The learned trial Judge erred in law and fact when she convicted the appellants without sufficient and conclusive evidence beyond reasonable doubt against the appellants*
5. *The sentence against the appellants was harsh and excessive in the* 25 *circumstances.*

Representations

When this appeal came up for hearing learned Counsel *Mr. Henry Kunya* appeared for 5 appellants, the 2nd appellant's appeal abated having died from prison in 30 January 2019. *Mr. Sam Oola* Senior State Attorney appeared for the respondent.

5 **Appellant's case**

Mr. Kunya, proposed to argue grounds 1, 3 and 4 together which relate to evaluation of evidence in respect of participation of the appellants. He submitted that, the identification of the appellants as the deceased's assailants was made by the single identifying witness PW9 Robina Rugadya Kasozi under circumstances which left the
10 possibility of mistaken identity. He argued that, the attack took place late in the night at around 1am and in a very small room which rendered it difficult for the witness to properly identify the assailants.

Counsel submitted that, due to the said difficult conditions, the witness exaggerated some accounts of her testimony, for instance, she stated that the attack took place
15 for 30 minutes, which the learned trial Judge deemed to be unlikely. Counsel contended that there being violence, bleeding, and other traumatic activities by the assailants must have affected the deceased's perception of the assailants, rendering mistaken identity likely. The witness was awoken from deep sleep by the violent events.

20 Counsel faulted the learned trial Judge for the reliance on the relevant confession statement to support the prosecution case submitting that it did not satisfy the legal standards necessary before it could be relied on. He highlighted the following issues and disparities; first, the confession statement was recorded in English, purported from the 5th appellant, a P.3 drop out who is illiterate; secondly, even though the
25 investigating officer alleged that there was an interpreter in the room, the interpreter is not reflected on the confession, thirdly, the 5th appellant alleged that he had been tortured but the learned trial Judge did not consider his allegations.

Counsel further argued that the learned trial Judge had drawn the wrong inferences from a piece of circumstantial evidence of a meeting which had taken place on the
30 eve of the attack. The Judge believed PW10 Diana Nalubega who had testified that

5 she had seen the appellants all gathered together at the 2nd appellant's plantation discussing certain issues she did not get to know about.

Counsel further argued that there was doubt as to whether the weapons which were tendered in evidence were the murder weapons. Although a panga had purportedly been recovered from one of the appellants, the appellant had denied having led the
.0 police to a discovery of the said weapon. Moreover, according to Counsel, it was not established that the recovered weapon was capable of causing the wounds found on the deceased. He cited *Kanakulya Muhamed vs Uganda, Court of Appeal Criminal Appeal No. 60 of 2003* for the proposition that a court must consider both negative and positive aspects of the circumstances under which identification is made and
5 not overlook the negative ones like the learned trial Judge herein did. Counsel concluded by asking this Court to allow ground 1.

In respect of ground 2, Counsel submitted that, the appellants had each set up an alibi stating that they were far from the crime scene on the material date. Counsel conceded that the alibi was rather belatedly raised in the appellants' testimonies but he nonetheless asked Court to consider the said alibis which showed that the appellants had denied participating in the murder of the deceased.

On the sentence imposed on the appellants, Counsel submitted that, the sentence was manifestly harsh and excessive in the circumstances of the case. He contended that, learned trial Judge overlooked the fact that the appellants were first offenders which should have been a mitigating factor in their favour. Secondly, Counsel submitted that, the trial Court's sentence was illegal having been passed without considering any mitigating factors. Thirdly, as regards the 3rd and 4th appellants, Counsel submitted that, they were deemed to have participated only through common intention and it was erroneous to sentence them to the same period of imprisonment as the other appellants who had participated directly.

5 **Respondent's reply**

In reply to the submissions on participation, Counsel submitted that the prosecution had adduced three types of evidence, namely; direct evidence, confession of the 5th appellant, and other circumstantial evidence. Counsel contended that all these instances of evidence confirmed the appellants' participation in the murder of the
10 deceased.

It was argued for the respondent that, the conditions prevailing at the time were conducive for PW9 to identify the appellants. PW9 testified that, the assailants carried torches which provided sufficient light for her to identify the appellants as the said assailants. The room she was in was relatively small and she was just 2
15 metres away from the spot where the deceased was struggling with the assailants from. Immediately after the attack, PW9 had reported the incident to PW8, which was consistent with her testimony. PW9 had also reported the incident and named the 1st, 2nd and 5th and 6th appellants as the assailants.

In regard to the participation of the 3rd and 4th appellants, Counsel contended that,
20 the prosecution adduced evidence of a grudge between the 3rd appellant and the deceased which may have been the motive for her to participate in the deceased's murder. The 3rd appellant had a grudge with the deceased whom she accused of having bewitched her baby and husband, who had subsequently died due to the said witchcraft. The 3rd appellant had earlier threatened the deceased saying that, *"he*
25 *would die the same way that her husband had died."* Similarly, the 4th appellant had a grudge with the deceased whom he suspected of having caused the death of her baby by witchcraft.

Further, in regard to the 3rd and 4th appellants, the two had participated in a meeting at the 2nd appellant's home where the plan to murder the deceased was discussed.
30 This was brought out in the confession statement of the 5th appellant which was

5 properly admitted and rightly relied on by the learned trial Judge. PW10 had also been a direct witness of the said meeting.

Further, in his confession the 5th appellant stated that, the 3rd appellant was identified as the mastermind behind the deceased's murder. The fact that, the 3rd appellant did not attend the deceased's vigil or burial pointed to the fact that she

10 was unconcerned by his death.

In respect of the 5th appellant, Counsel contended that, his participation was brought out in his very elaborate confession where he spelt out the role he had played in the murder of the deceased. The 5th appellant's cap was recovered from the scene of crime and examined by PW14 a Government Laboratory Analyst who found that the

15 cap contained samples of the deceased' sweat and blood.

Further, Counsel submitted that, the 5th respondent conduct of fleeing the village where he used to stay and going to Mubende in the aftermath of the murder of the deceased, as well as the fact that he had changed his identity by assuming another name of Kalyango, pointed to the guilt of the murder of the deceased.

20 In respect of the 6th appellant, it was argued for the respondent that, he had been identified at the scene of crime by the single identifying witness. The 6th appellant had also been named as a participant in the 5th appellant's confession statement. Further, that his conduct in the aftermath of the murder of the deceased had implicated him in the said murder in that the 6th appellant had fled from the

25 relevant village where the deceased was murdered and gone to Masaka. Moreover, that while there he had changed his name to Seremba to conceal his identity. There was also the evidence of a dying declaration in which the deceased revealed that the 6th appellant was his assailant.

As regards the defence of *alibi*, it was submitted for the respondent that, the

30 appellants' alibis were duly considered and rejected by the trial Court.

5 Counsel submitted that the totality of the prosecution's evidence showed that, the appellants had participated in the murder of the deceased. Although not all the appellants were physically at the scene of crime, they all had the common intention to murder the deceased.

In respect of the sentences imposed, Counsel conceded that, the sentence of 60
10 years imprisonment for each of the appellants was severe and asked this Court to impose 35 years for the 1st, 5th and 6th appellants and 30 years for the 3rd and 4th appellants which would reflect their level of participation in the murder of the deceased

Resolution

15 This being a first appellate court, we have a duty to retry matters of fact by subjecting the evidence to fresh scrutiny and coming to our own conclusions on the controversies for resolution. The duty of this court is stipulated in *Rule 30 (1) (a)* of Rules of this Court that:

> *"Power to reappraise evidence and to take additional evidence.*
>
> 20 *(1) On any appeal from a decision of the High Court acting in its original jurisdiction, the court may-*
>
> *(a) reappraise the evidence and draw inferences of fact"*

In the exercise of the duty to retry matters of fact and draw our own inferences, we have cautioned ourselves that we have neither seen nor heard the witnesses testify
25 and made due allowance for that shortcoming. See; *Pandya vs R [1957] EA 336, Selle and Another vs Associated Motor Boat Company [1968] EA 123), Kifamunte Henry vs Uganda, Supreme Court Criminal Appeal No. 10 of 1997 and Bogere Moses and Another vs Uganda, Supreme Court Criminal Appeal No. 1 of 1997.*

5 We shall keep the above principles in mind while resolving the grounds of appeal. We have listened to the submissions of Counsel and carefully perused the Court record as well as the judicial precedents cited to us. We now proceed with our duty of evaluating the evidence.

In regard to the participation of the appellants in the offence in question, we note 10 that; - There is no dispute that the deceased, Kasozi Gerald is dead or that his death was caused unlawfully. The deceased's body had multiple injuries and it is safe to conclude that his assailants caused his death with malice aforethought. It is the issue of participation which is contested, and whereas the prosecution case was that the appellants had caused the death of the deceased, the appellants deny any 15 involvement in the said murder.

The prosecution brought PW9 Robinah Rugadya Kasozi, as the single identifying witness who directly saw and identified the appellants as the assailants who murdered Kasozi Gerald the deceased.

The law on identification by a single witness has been laid out in several cases. The 20 leading authority is that of *Abdullah Bin Wendo and another vs. R (1953) 20 EACA 583.* The law was further developed in the authorities of *Abdulla Nabulere vs. Uganda, Court of Appeal Criminal Appeal No. 9 of 1978* and *Bogere Moses vs. Uganda Supreme Court Criminal Appeal No. 1 of 1997.* The principles deduced from these authorities are that-

25 i) Court must consider the evidence as a whole.
ii) The court ought to satisfy itself from the evidence whether the conditions under which the identification is claimed to have been made were favourable or difficult.
iii) The court must caution itself before convicting the accused on the 30 evidence of a single identifying witness.

5 iv) In considering the favourable and unfavourable conditions, the court should particularly examine the length of time the witness observed the assailant, the distance between the witness and the assailant, familiarity of the witness with the assailants, the quality of light, and material discrepancies in the description of the accused by the witness.

10 The legal position is that the court can convict on the basis of evidence of a single identifying witness. However, the court should always warn itself of the danger of possibility of mistaken identity. This is particularly important in cases where there existed factors which presented difficulties for positive identification at the material time. The court must in every such case examine the testimony of the single witness 15 with the greatest care and where possible look for corroborating or other supportive evidence, so that it can be sure that there is no mistake in the identification. If, after so warning itself and scrutinising the evidence, the court finds no corroboration for the identification evidence it can still convict if it is sure that there is no mistaken the identity. Corroboration therefore is only a form of aid 20 required where conditions favouring correct identification are difficult. See: *Abdala Nabulere & Another vs Uganda (Supra) Moses Kasana vs Uganda (1992 - 93) HCB 47* and *Bogere Moses & Another vs Uganda (Supra).*

The record of appeal indicates that, PW9 was well known to each of the appellants and testified that, there were four in total but she was able to only identify the 1st, 25 5th and 6th appellants. She testified that, the appellants carried torches which provided light from which she was able to identify them. In addition, she testified that, some of the appellants like the 5th appellant had threatened to kill her if she made an alarm during the attack. She was also able to hear a dying declaration in which the deceased stated that the 6th appellant was killing him during the time of 30 the attack. She also testified about a cap that was left at the scene of crime. From the

5 above analysis we note that, the evidence PW9 as a single identifying witness was in line with the principles set out above.

There is also a confession recorded from the 5th appellant which was admitted by the trial Court after it was satisfied as to its voluntariness. Counsel for the appellants faulted the trial Court for admitting the said confession statement. He cited two
10 issues; firstly that the interpreter had not signed on the document to show that the 5th appellant had not used English while giving the confession; secondly, that the learned trial Judge had not considered the possibility that the appellant was coerced by torture into giving the said confession.

We are unable to accept the submissions of Counsel for the appellants that, the
15 learned trial Judge did not consider the possibility of torture. The prosecution brought PW15 Babutangira Steven the Detective Superintendent of Police, testified that he recorded a charge and caution statement for the 5th appellant in which the latter confessed to having committed the crime in question without any torture or coercion. The learned trial Judge conducted a trial within a trial after the 5th
20 appellant had repudiated the said confession. Thereafter in her ruling she held that, the issue of torture was an afterthought by the 5th appellant who did not strike her as a truthful witness. On that hand she found that, the prosecution witnesses were truthful.

The settled legal position is that when the question arises as to which witness
25 should be believed rather than another and that question turns on manner and demeanour the appellate Court must be guided by the impressions made on the judge who saw the witnesses. See: *Kifamunte Henry vs. Uganda, Supreme Court Criminal Appeal No. 10 of 1997*. With that position in mind, we are left unable to fault the learned trial Judge for admitting the relevant confession statement in evidence.

5 We find that the details contained in the 5th appellant's confession statement to be a pointer to its truthfulness, and proof that it was made voluntary. We observe that a person who had not participated in the crime would not have been able to set out details contained in the confession statement. We have considered the contention for the appellants that the statement was not endorsed by the interpreter. We find

10 that it has no merit for two reasons; first the alleged interpreter was brought as a witness during the trial within a trial and she confirmed that, she had acted as an interpreter while PW15 recorded the confession statement. Secondly, irregularities such as the failure to note the relevant interpreter will not always lead to a nullification of a confession unless they have led to a miscarriage of justice. See:

15 *Segonja Paul vs. Uganda, Supreme Court Criminal Appeal No. 0042 of 2000.*

We have no reason to fault the learned trial Judge for finding that the relevant confession was true and for placing reliance on it. The said confession implicated all the appellants in the murder of the deceased. The 2nd, 3rd and 4th appellants were implicated as they had common intention to murder the deceased even though they

20 never physically participated at the scene of crime.

Section 20 of the Penal Code Act (Cap. 120) on common intention provides that;-

> *"When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of that purpose an offence is committed of such a nature that its commission was a probable*
>
> 25 *consequence of the prosecution of that purpose, each of them is deemed to have committed the offence."*

The law on common intention is now well settled. Common intention maybe inferred from the presence of the accused person(s), the action and omissions of any of them to dissociate from the assault. See: *R vs Okute [1941] 8 EACA P.80,*

30 *Rwabugande Moses vs Uganda, Supreme Court Criminal Appeal No. 25 of 2014*

confirming the decision of the Court of Appeal on the law regarding common intention.

In *Ismail Kisegerwa & Another Vs Uganda, Court of Appeal Criminal Appeal No. 6 of 1978* the doctrine of common intention was described as follows:-

> *"In order to make a doctrine of common intention applicable it must be shown that the accused had shared with the actual perpetrator of the crime a common intention to pursue a specific unlawful purpose which led to the commission of the offence. If it can be shown that the accused persons shared with one another a common intention to pursue a specific unlawful purpose, and in the prosecution of that unlawful purpose an offence was committed, the doctrine of common intention would apply irrespective of whether the offence committed was murder or manslaughter, it is now settled that an unlawful common intention does not imply a pre—arranged plan. See: R Vs Okute [1941] 8 E.A.C.A. at p.80. Common intention may be inferred from the presence of the accused persons, their actions and the omission of any of them to dissociate himself from the assault. See: R Vs Tabulayenka* [1943] 10 E.A.C.A. 51. *It can develop in the course of events though it might not have been present from the start See: Wanjiro Wamiro Vs R [1955] 22 E.A.C.A 521 at p.52 quoted with approval in Mungai'a case. It is immaterial whether the original common intention was lawful so long as an unlawful purpose develops in the course of events. It is also irrelevant whether the two participated in the commission of the offence."*

The Court of Appeal of Uganda (predecessor to the Supreme Court) In *Charles Komiswa Vs Uganda [1979] HCB 86* discussing the doctrine of common intention stated thus:-

> *"...where several persons are proved to have combined together from the same illegal purposes, any act by one of them in pursuance of the original concrete*

5 *plan and with reference to common object in the contemplation of the law, is an act of the whole, each party is the agent of the others in carrying out the object of the conspiracy he renders himself a principle offender."*

The doctrine of common intention could not have been set out in better words. Needless to say the above cited decision binds us.

10 The prosecution evidence established that although the 2nd, 3rd and 4th appellants never participated physically in the murder, they held meetings at which there were discussions on how to hire people to murder the deceased. The 5th appellant while making his confession stated as follows;-

"...One day during the month of MARCH 2009, while we were seated under a
15 *mango tree together with Mzee Paul Bwengyesa and his wife Nasimbwa. Mzee said that one of his son by the names of Kasozi Gerald has finished his sons by bewitching them. He said that last year JULY 2008 he killed ANDREW KAMI and in FEB 2009 he killed also Nsamba. He told his wife Nasimbwa during my presence that he will get somebody whom he will pay money so as to kill Kasozi. G*
20 *As we were still seated there, he sent his wife Nasimbwa to go and call for the wife of Late Nsamba and indeed they came together. Adter her arrival he Bwengyesa P. told MRS Nsamba that it is his son Kasozo G. who killed her husband so he wanted also to revenge by killing him (Kasozi G.). Mzee P. Bwengyesa asked MRS Nsamba who can do work and she told him that Lujaga and Richard Muganga*
25 *can do that work. She told him that she was going to talk to them and she went to talk to them and the following day she came back and told him that she had seen them and they agreed to do the work, but before PAUL Bwengyesa had told us that he had Five hundred thousand for that work. Late Mzee Bwebgyesa went and bought two pangas well sharpened and gave them to MRS Nsamba in order to*

5 *keep them so as to give them to Rijaga and Richard Muganga for the planned work..."*

We find that, the 2nd, 3rd and 4th appellant had common intention to murder the deceased even though they never physically participated at the scene of crime.

Further to the above, there was also evidence of grudges/threats from the 2nd, 4th 10 and 3rd appellants to kill the deceased or to cause him harm. This evidence was brought out by PW8 Gerald Charles Kuteesa who was well known to the appellants. PW8 is a biological son of the 2nd appellant, a stepson of the 4th appellant and a brother in law of the 3rd appellant. PW8 also testified about the hostile conduct of the 1st appellant to the deceased, which on one occasion resulted in the former 15 barring the deceased from speaking at the burial of one Nsamba, a brother to PW8.

Having reappraised the evidence, we are convinced that the appellants participated in the murder of the deceased in this case. We are satisfied that the prosecution placed the 1st, 5th and 6th appellants at the scene of crime as the deceased's assailants. We are also satisfied that the 2nd, 3rd and 4th appellants formed a common 20 intention with them to murder the deceased. In view of the above analysis, the appellants' alibis, which were belatedly raised during their respective testimonies were rightly rejected by the learned trial Judge.

Therefore, we are unable to interfere with the conviction of all the appellants by the learned trial Judge. We agree with the learned trial Judge that, the prosecution 25 proved the case against the appellants beyond reasonable doubt. Accordingly grounds one, two, three and four of appeal fail and are hereby dismissed.

The appellants' conviction is hereby upheld.

The appellants appealed against the severity of their sentence. The learned trial 30 Judge sentence sentenced each of to 60 years imprisonment.

5 As an appellate Court, the circumstances and principles upon which we can interfere with the sentence of the trial Court are limited. These principles are now well settled and were set out by the Supreme Court in *Kiwalabye Bernard Vs Uganda, Supreme Court Criminal Appeal No.143 of 2001.*

"The appellate court is not to interfere with the sentence imposed by a trial
10 *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*
15 *wrong in principle"*

Mindful of the above principles of law and considering the decisions of this Court and the Supreme Court on sentencing, we find that sentence of 60 imprisonment for each of the appellant was harsh and manifestly excessive in the circumstances of this case.

20 There is need to have uniformity and consistency in sentencing. We therefore have to take into consideration the sentences this Court and the Supreme Court have imposed on offenders in similar circumstances.

Accordingly we set aside the sentence imposed by the learned trial Judge. We now proceed to impose a sentence of our own that we consider to be more appropriate.
25 Having found so, we now invoke *Section 11* of the Judicature Act (CAP 13) and impose a sentence we consider appropriate in the circumstances of this appeal.

Section 11 of the Judicature Act provides as follows;-

"For the purpose of hearing and determining an appeal, the Court of Appeal shall have all the powers, authority and jurisdiction vested under any written

5 *law in the court from the exercise of the original jurisdiction of which the appeal originally emanated."*

The sentences for murder in respect of years, since the annulment of the mandatory death penalty in 2009 range from 18-35 years imprisonment, depending on the circumstances of each case.

10 The appellants were convicted of murder, the maximum sentence of which is death. The learned trial Judge who listened to the witness and convicted the appellants did not impose the death penalty, instead she sentenced each of them to 60 years imprisonment. He considered aggravating factors specifically the horrific, heinous and barbaric manner in which the deceased was murdered yet he was an innocent 15 person. He was a family man with a wife and children. They premeditated the killing

However, they were all first offenders. The 1st appellant is a family man with two wives and 4 children. He was relatively young aged 34 years at the time of the commission of the offence. He had spent 3 years on remand. The 3rd appellant is a widow. She has 7 children to take care of. She was relatively young aged 38 years at 20 the time of the commission of the offence. She had spent 3 years on remand. The 4th appellant has 5 children to take care of. She was relatively young aged 36 years at the time of the commission of the offence. She had spent 3 years on remand. The 5th appellant is a family man with a wife and 3 children. He was relatively young aged 33 years at the time of the commission of the offence. He had spent 3 years on 25 remand. The 6th appellant was relatively young aged 25 years at the time of the commission of the offence. He had spent 3 years on remand. Justice requires that we exercise some leniency.

In *Kamya Abdullah & 4 others Vs Uganda, Supreme Court Criminal Appeal No. 24 of 2015,* the deceased was killed by a mob, the appellants were accordingly sentenced 30 to 40 years imprisonment, this Court substituted the sentence of 40 years

imprisonment with 30 years imprisonment. On further appeal the Supreme Court reduced the sentence to 18 years imprisonment.

In *Omusenu Sande Vs Uganda, Court of Appeal Criminal Appeal No. 0029 of 2011*, the appellant was convicted of the offence of murder and sentenced to 30 years imprisonment. On appeal, this Court reduced the sentence to 20 years imprisonment.

In *Wodaba Moses Vs Uganda, Court of Appeal Criminal Appeal No. 0758 of 2014*, the appellant was convicted of the offence of murder and sentenced to 39 years imprisonment. On appeal, this Court reduced the sentence to 23 years imprisonment.

Taking into account the gravity of the offence, and the sentencing range established by this Court and the Supreme Court, we are of the view that the sentence of 60 years imprisonment imposed on each of the by the learned trial was harsh and manifestly which is hereby set it aside.

1. In respect of the 1st appellant, we consider a sentence of 30 years imprisonment to be appropriate, from the sentence we deduct 3 years the appellant had spent on pre-trial detention, and order that he serves a period of 27 years in prison.
2. In respect of the 3rd appellant we consider a sentence of 20 years imprisonment to be appropriate, from the sentence we deduct 3 years the appellant had spent on pre-trial detention, and order that she serves a period of 17 years in prison.
3. In respect of the 4th appellant we consider a sentence of 20 years imprisonment to be appropriate, from the sentence we deduct 3 years the appellant had spent on pre-trial detention, and order that she serves a period of 17 years in prison.

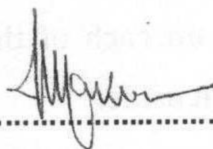
5 4. In respect of the 5th appellant, we consider a sentence of 30 years imprisonment to be appropriate, from the sentence we deduct 3 years the appellant had spent on pre-trial detention, and order that he serves a period of 27 years in prison.

5. In respect of the 6th appellant, we consider a sentence of 30 years imprisonment to be appropriate, from the sentence we deduct 3 years the appellant had spent on pre-trial detention, and order that he serves a period of 27 years in prison.

Their respectively sentences are to run from the 1st day of June, 2012 the date of their conviction.

15 We so order.

Dated at **Kampala** this ....19th...............day of...........June..........2020.



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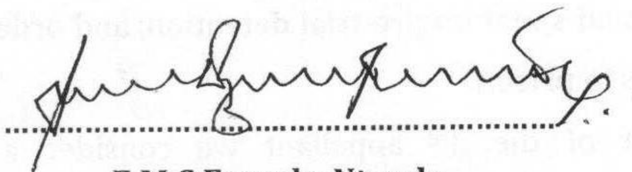
Kenneth Kakuru

20 **JUSTICE OF APPEAL**



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F.M.S Egonda-Ntende

JUSTICE OF APPEAL

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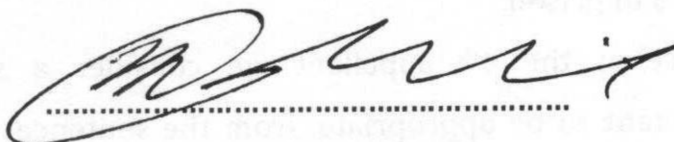

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Christopher Madrama

JUSTICE OF APPEAL

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