

5 **THE REPUBLIC OF UGANDA**  
**IN THE COURT OF APPEAL OF UGANDA**  
**AT MBARARA**

10 **CRIMINAL APPEAL NO. 110 OF 2007**

**TUSINGWIRE SAMUEL :.....APPELLANT**

**VS**

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

**Coram: Hon. Mr. Justice Kenneth Kakuru, JA**  
**Hon. Mr. Justice Byabakama Mugenyi Simon, JA**  
**Hon. Mr. Justice Alfonse C Owiny-Dollo, JA**

20 **JUDGMENT OF THE COURT**

This is an appeal from the judgment of Hon. P.K Mugamba J (as he then was) in **High Court Criminal Case NO. 32 of 2007** at Rukungiri dated 24/10/2014 in which the appellant was convicted of murder contrary to **Section 188 and 189 of the Penal Code Act** and sentenced to life imprisonment.

**Representations**

30 At the hearing of this appeal, learned Counsel Mrs Suwaya Matovu appeared for the appellant who was in Court; while Ms. Jennifer Amumpaire appeared for the respondent.

Ms Matovu abandoned the first two grounds of appeal  
35 which were both in respect of the conviction preferring  
instead to argue the third ground, which was only in  
respect of sentence. This appeal therefore is in respect of  
severity of sentence only.

### **The Appellant's Case**

40 Counsel for the appellant submitted that the learned trial  
Judge erred when he did not take into account the  
period the appellant had spent on remand before  
passing sentence. She argued that the appellant had  
spent 4 years and 6 months on remand and this period  
45 ought to have been taken into account before the  
passing of the sentence.

Counsel also argued that the learned trial Judge did not  
take into account all the mitigating factors in favour of  
50 the appellant. These factors, counsel argued, included  
the age of the appellant. She submitted that the  
appellant was 23 years old at the time he committed the  
offence. He was young and capable of reform she  
submitted. Counsel asked Court to reduce the sentence,  
55 to a definite custodial term that would allow him to reform  
and to be a good citizen. She asked Court to reduce the  
sentence to 15 years imprisonment. She relied on the

authority of **Mbunya Godfrey Vs Uganda Supreme Court  
Criminal Appeal NO. 4 of 2011.**

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Counsel argued that in the above cited case, Court took into account the fact that the appellant was a first offender who deeply regretted his actions.

In this case counsel submitted the appellant is a first  
65 offender, he is remorseful, has siblings to look after and he is capable of reform.

**The Respondent's Case**

Ms Amumpaire opposed the appeal and supported the  
70 sentence. She contended that the sentence was neither harsh nor manifestly excessive in the circumstances of the case. She said the deceased had been killed in a very cruel manner, she was an old woman of 60 years and had also been raped.

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Counsel also submitted that the trial Judge had taken into account all mitigating and aggravating factors before passing the sentence of life imprisonment. Further, that the learned trial Judge had taken into account the fact  
80 that the maximum sentence for murder is death, and having taken into account the mitigating factors, he

refrained from imposing the death sentence preferring a lesser sentence of life imprisonment.

85 **Resolution of issues**

This being a first appeal, this court is required to re-appraise all the evidence to make its own inferences on all issues of law and fact. See **Rule 30(1) of the Rules of this Court and Kifamunte Henry Vs Uganda SCCR. Appeal No. 90 10 of 1997.**

We have carefully listened to the submissions of both counsel. We have also perused the court record and authorities availed to us. We have also carefully 95 considered the circumstances of this case in relation to already decided cases.

In this case, the appellant was a young man of 23 years when he committed the offence. At the time of 100 conviction, he was 27 years old. He is therefore capable of reform while in prison. He is stated to have been remorseful at the time of conviction. He is a first offender with no previous criminal record.

105 However there are aggravating facts. Those include the fact that the appellant attacked and killed an old

woman of 60 years, without provocation. He inserted a sharp object into her vagina pushing it deep into her abdomen. The intestines were protruding through her birth canal when she died. This Court in **Nkonge Robins Vs Uganda Court of Appeal Criminal Appeal No. 148 of 2009** upheld a death sentence of murder of a single person. The murder in that case was not this gruesome.

In **Kisutu Mujerdin alias Mpata Vs Uganda, Court of Appeal Criminal Appeal No. 128 of 2010**, this Court upheld a sentence of 30 years imprisonment for murder. In **Kyaterekera George William Vs Uganda, Court of Appeal Criminal Appeal No. 0113 of 2010**, this Court similarly upheld a sentence of 30 years for murder. **Acuku Margret Opii Vs Uganda Court of Appeal Criminal Appeal NO.123/2008**, this Court reduced the sentence from death to 20 years imprisonment. The victim had been killed by drowning.

The circumstances under which this Court may interfere with the sentence of a trial court are limited. Before this Court can interfere with a sentence, the factors must exist which were set out by the Supreme Court in **Kiwalabye Bernard Vs Uganda, Supreme Court CR. Appeal N0. 143 of 2011** as follows;



135 *"The appellate Court is not to interfere with sentence imposed by a trial 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 ignore to consider an important matter or*  
140 *circumstances which ought to be considered when passing the sentence or where the sentence imposed is wrong in principle."*

The Court may not interfere with the sentence imposed by a trial court simply because it would have imposed a  
145 different sentence had it been the trial Court. See **Ogalo S/O OWOU Vs Republic [1954] 24 EA CA 270.**

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

We accordingly set side this sentence on that account and substitute it with a sentence of 30 years imprisonment,  
155 to run from the date of conviction, having taken into account the period the appellant spent on remand.

It is so ordered.

DATED AT MBARARA THIS *26<sup>th</sup>* DAY OF *October* 2016.

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**HON. JUSTICE KENNETH KAKURU,  
JUSTICE OF APPEAL**

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**HON. JUSTICE BYABAKAMA MUGENYI SIMON,  
JUSTICE OF APPEAL**

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**HON. JUSTICE ALFONSE C OWINY-DOLLO,  
JUSTICE OF APPEAL**