

5 **THE REPUBLIC OF UGANDA**

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

10 **CRIMINAL APPEAL NO. 0764 OF 2014**

TWIKIREZE ALICEAPPELLANT

VERSUS

UGANDA..... RESPONDENT

15

CORAM:

HON. MR. JUSTICE KENNETH KAKURU, JA

20

HON. MR. JUSTICE SIMON BYABAKAMA MUGENYI, JA

HON. MR. JUSTICE ALFONSE C. OWINY-DOLLO, JA

JUDGMENT OF THE COURT

25

The appellant was convicted of murder on 11th February 2004, by *Hon. Justice Lameck N. Mukasa J*, and sentenced to suffer death. At that time the death penalty was the only sentence stipulated by the law for a person convicted of murder.

30

She appealed to this court against her conviction. On 14th January 2011, this Court dismissed her appeal and upheld

5 the conviction, On sentence, this court at page 10 of its Judgment stated:-

“The appellant was properly convicted. The sentence

of death was exact”.

10 Apparently the matter was sent back to the High Court for re-sentencing following the Supreme Court decision in **Attorney General Vs Suzan Kigula and 417 others: Constitutional Petition Appeal No. 03 of 2006**, in which the Supreme Court confirmed the decision of the
15 Constitutional Court annulling the mandatory death penalty. In that case, **Attorney General Vs Suzan Kigula (Supra)**, the Supreme Court ordered that the case files of all persons who had, before then, been convicted of capital offences and sentenced to the then mandatory death penalty be returned
20 to the High Court for mitigation proceedings and re-sentencing.

This appeal presents peculiar facts. The Supreme Court decision in **Attorney General Vs Suzan Kigula (Supra)** was made on 21st January 2009, before the appellant’s appeal to
25 this Court had been determined. It was determined on 14th January 2011. Following the Supreme Court directive, this

- 5 Court would have been expected, either to send the file back to the High Court for re-sentencing or to re-sentence the appellant by invoking *Section 11* of the Judicature Act that grants it the powers of the trial Court. This Court appears simply to have confirmed the death sentence.
- 10 Be that as it may, the matter was subsequently sent back to the High Court for reconsideration of sentence. On 16th July 2014, Hon. Justice Joseph Murangira J, upon hearing the parties on mitigation, re-sentenced the appellant to 37 years imprisonment.
- 15 This appeal is against that sentence only and the sole ground of appeal states as follows;-

“The sentence of 37 years was harsh and excessive in the circumstances”.

Representations

- 20 The appellant who was present in Court was represented by learned counsel **Mr. Jadison Agaba** while the respondent was represented by **Ms. Rose Tumuhaise**.

Appellant’s case

5 It was argued for the appellant that a sentence of 37 years imprisonment was harsh and excessive in the circumstances of this case. That this Court and the Supreme Court have imposed lesser sentences for the same offence even where there existed more aggravating factors.

10 Counsel cited ***Abu Baker Hussein Godi vs Uganda: Supreme Court Criminal Appeal No. 62 of 2011*** in which the Supreme Court confirmed a sentence of 25 years for murder.

He asked Court to reduce the sentence.

15 **Respondent's case**

Ms. Tumuhaise opposed the appeal and supported the sentence. She submitted that the trial Judge had considered all the mitigating and aggravating factors before imposing a sentence of 37 years imprisonment. Counsel further argued
20 the peculiar facts of this case distinguish it from the other cases cited by counsel for the appellant. In this case, Counsel submitted, the appellant had killed an innocent little girl of only 5 years. The appellant was her step mother who should have protected her, instead she killed her.

25 She asked Court to confirm the sentence.

5 **Resolution by Court**

We have carefully listened to the submissions of both counsel. We have perused carefully the Court record and the authorities cited to us.

We are alive to the law that requires us as a first appellate
10 Court to re-appraise all the evidence and to come up with our own inferences. *See:- Rule 30(1) of the Rules of this Court, Bogere Moses Vs Uganda: Supreme Court Criminal Appeal No. 1 of 1997.*

In this case the appellant was convicted of murder. She killed
15 her step daughter who was an innocent little girl of 5 years. The little girl had done nothing wrong and did not deserve to die the way she did by drowning. The appellant who ought to have protected her killed her, cutting short for ever her life and future.

20 She exercised no mercy and felt no pity for her. The deceased's only crime is that she happened to be her step daughter.

However, the appellant is a first offender, with no previous criminal record. She had spent 3 years on remand prior to
25 her conviction. There is need for Courts to maintain

5 consistency in sentencing. In ***Uwihayimaana Molly vs Uganda: Court of Appeal Criminal No. 103 of 2009*** in which the appellant had murdered her husband by hacking, this Court reduced her sentence from death to 30 years imprisonment.

10 In ***Atuku Margret Opii vs Uganda: Court of Appeal Criminal Appeal No. 123 of 2008***, this Court reduced the sentence from death to 20 years imprisonment. In that case the appellant had killed a neighbour's 12 year old daughter by drowning.

15 We consider a sentence of 37 years imprisonment for a first offender to be harsh and excessive in the circumstance of the case and we set it aside.

Having taken into account all the mitigating and aggravating factors, the period the appellant spent on remand and the
20 other circumstances of this case, we now sentence her to 25 years imprisonment, to commence from 11th February 2004, when she was convicted.

This appeal therefore succeeds to that extent.

[Handwritten signature]

5 **Dated at Mbarara** this.....*6th*.....day of **November** 2016.

10

.....*[Signature]*.....
HON. JUSTICE KENNETH KAKURU
JUSTICE OF APPEAL

15

.....*[Signature]*.....
HON. JUSTICE SIMON BYABAKAMA MUGENYI
JUSTICE OF APPEAL

20

.....*[Signature]*.....
HON. JUSTICE ALFONSE C. OWINY-DOLLO
JUSTICE OF APPEAL