

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT GULU
CRIMINAL CASE No. 0119 OF 2020

UGANDA PROSECUTOR

5

VERSUS

1. **OROMA DENISH** }
2. **NYEKO INNOCENT** } **ACCUSED**
10 3. **ANENO SCOVIA** }

Before: Hon Justice Stephen Mubiru.

PROCEEDINGS

15 108th July, 2020
3.10 am
Attendance

Mr. Kilama Stephen, Court Clerk.
Mr. Omia Patrick, Resident State Attorney for the Prosecution.
20 Mr. Walter Okidi Ladwar, Counsel for the accused.
The accused is present in court

A1 Oroma Denish: I speak Acholi.

A2 Nyeko Innocent: I speak Acholi.

25 **State Attorney:** we have negotiated a plea bargain and accordingly executed a plea agreement which I pray to present to court.

Counsel for the accused: That is correct.

A1: I signed the agreement willingly at pages 5. My constitutional rights were explained to me and I willingly waived them fully cognisant of the
30 consequences of signing the plea agreement.

A2: I signed the agreement willingly at pages 5. My constitutional rights were explained to me and I willingly waived them fully cognisant of the consequences of signing the plea agreement.

Court: The agreement is received and hereby forms part of the court record.

.....
Stephen Mubiru
Judge
10th July, 2020.

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Court: The Indictment is read and explained to the accused in the Acholi language.

Details; Murder C/s 188 and 189 of *The Penal Code Act*. It is alleged that the accused and two others on the 15th day of September, 2018 at Munu Otam village in Kitgum District murdered Oroma Denish.

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A1: I have understood the indictment. It is true I strangled him.

Court: A plea of guilty is entered.

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Stephen Mubiru
Judge
10th July, 2020.

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A2: I have understood the indictment. I found the two people fighting and my intention was to separate A1 from fighting the deceased. I did not participate in beating the deceased.

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Court: A plea of not guilty is entered. His case against A2 Nyeko Innocent is adjourned to the next convenient session of the court and he is ermined until then.

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Stephen Mubiru
Judge
10th July, 2020.

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State Attorney: On the fateful morning, the accused went for a deco dance and began fighting at the location of the dance. They were stopped but the accused told the deceased he was going to beat him up. They left for their home. The accused went on and continued to assault the deceased from the home of the accused which led to the death of the deceased. The accused strangled the deceased. The deceased died of strangulation. The accused was examined and found to have lacerations around the hairline measuring 2 x 1 cms. He was of normal mental status and 26 years old.

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State Attorney: I pray to tender in the medical forms.

Defence Counsel: I have no objection.

Court: They are received as part of the facts and are marked P. Ex.1 and P. Ex.2 respectively.

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Stephen Mubiru
Judge
10th July, 2020.

10 **A1 Oroma Denis:** I have understood the facts. They are correct.

Court: The accused A1 Oroma Denis is convicted on his own plea of guilty for the offence of Murder c/s 188 and 189 of *The Penal Code Act*.

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.....
Stephen Mubiru
Judge
8th July, 2020.

State Attorney: the aggravating factors are that the convict killed a relative by strangulation, in a prolonged state of anger.

Counsel for the accused: the mitigation is that he readily pleaded guilty, he is a first time offender, he is still of youthful age at 19 years old, is remorseful and capable of reform.

Accused: My mother died and my father is now raising orphans alone. I pray for lenience so that I go and help him to raise the orphans left by my sister. I have siblings and both me and my brother are here in prison. I need to go back and support the children.

SENTENCE AND REASONS FOR THE SENTENCE

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The offence of murder is punishable by the maximum penalty of death as provided for under section 189 of the *Penal Code Act*. However, this represents the maximum sentence which is usually reserved for the worst of the worst cases of Murder. This is not one of such cases, and it is for that reason that the death sentence was discounted, giving way to a plea bargain.

Where the death penalty is not imposed, the starting point in the determination of a custodial sentence for offences of murder has been prescribed by Item 1 of Part I (under Sentencing ranges - Sentencing range in capital offences) of the Third Schedule of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013* as 35 years' imprisonment. I have taken into account the current sentencing practices in relation to cases of this nature. I have thus adopted a starting point of a range of 20 – 30 years' imprisonment.

From this, the convict is entitled to a discount for having pleaded guilty. The practice of taking guilty pleas into consideration is a long standing convention which now has a near statutory footing by virtue of regulation 21 (k) of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*. As a general principle (rather than a matter of law though) an offender who pleads guilty may expect some credit in the form of a discount in sentence. The requirement in the guidelines for considering a plea of guilty as a mitigating factor is a mere guide and does not confer a statutory right to a discount which, for all intents and purposes, remains a matter for the court's discretion. However, where a judge takes a plea of guilty into account, it is important that he or she says he or she has done so (see *R v. Fearon [1996] 2 Cr. App. R (S) 25 CA*). In this case therefore I have taken into account the fact that the convict readily pleaded guilty as one of the factors mitigating her sentence.

The sentencing guidelines leave discretion to the Judge to determine the degree to which a sentence will be discounted by a plea of guilty. As a general, though not inflexible, rule, a reduction of one third has been held to be an appropriate discount (see: *R v. Buffrey (1993) 14 Cr App R (S) 511*). Similarly in *R v. Buffrey 14 Cr. App. R (S) 511*). The Court of Appeal in England indicated that while there was no absolute rule as to what the discount should be, as general guidance the Court believed that something of the order of one-third would be an appropriate discount. In light of the convict's plea of guilty, and persuaded by the English practice, because the convict before me pleaded guilty, I propose at this point to reduce the sentence by one third from the starting point of a range of 20 – 30 years to a range of 14 – 20 years' imprisonment, before mitigation.

Having considered the sentencing guidelines and the current sentencing practice in relation to offences of this nature, the aggravating and mitigating factors outlined above, I hereby accept the submitted plea agreement entered into by the accused, his counsel, and the State Attorney and in accordance thereto, to find the proposed sentence of seventeen (17) years' imprisonment as
5 befitting the circumstances of the case and the antecedents of the convict, especially in light of his age.

In accordance with Article 23 (8) of the Constitution and Regulation 15 (2) of The *Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*, to the effect that
10 the court should deduct the period spent on remand from the sentence considered appropriate, after all factors have been taken into account, I note that the convict was charged on 2nd October, 2018 and been in custody since then. I hereby take into account and set off one (1) year and nine (9) months as the period the convict has already spent on remand. I therefore sentence the convict to a term of imprisonment of fifteen (15) years and three (3) months to be served starting
15 today.

Having been convicted and sentenced on his own plea of guilty, the convict is advised that he has a right of appeal against the legality and severity of this sentence, within a period of fourteen days.

20 Dated at Gulu this 10th day of July, 2020.

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Stephen Mubiru,
Judge.
10th July, 2020.

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**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN**

TO: AT GULU

**The Officer in Charge,
Government Prison, Gulu.**

WARRANT OF COMMITMENT

WHEREAS on the **10th** day of **July**, 2020 **OROMA DENISH** the **1st**
Prisoner in Criminal Session Case No.**0119** of the Calendar Year for
2020 was convicted before me: Hon. Justice **STEPHEN MUBIRU**, a
Judge of the High Court of Uganda, of the offence of **MURDER**
C/s 188 and 189 of The Penal Code Act and was sentenced to
FIFTEEN (15) YEARS AND THREE (3) MONTHS'
IMPRISONMENT.

THIS IS TO AUTHORISE AND REQUIRE YOU, the Superintendent
to receive the said **OROMA DENISH** into your custody in the said
prison together with this **Warrant** and there carry the afore said
sentence into execution according to Law.

GIVEN under my Hand and the Seal of the court this **10th** day of
July, 2020.

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JUDGE.