

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT GULU
CRIMINAL CASE No. 0053 OF 2019

UGANDA **PROSECUTOR**

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VERSUS

1. **KOMAKECH MICHAEL** }
2. **ACIRE BOSCO AGONO** } **ACCUSED**
10 3. **NONO CHARLES** }

Before: Hon Justice Stephen Mubiru.

PROCEEDINGS

15 8th July, 2020
2.50 pm
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 Komakech Michael: I speak Acholi.

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

Counsel for the accused: That is correct.

Accused: 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.

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

.....
Stephen Mubiru
Judge
8th 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 between the 23rd and 24th day of July, 2018 at Aparanga village in Nwoya District murdered John Onyuta Quirino.

5 **Accused:** I have understood the indictment. It is true.

Court: A plea of guilty is entered.

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Stephen Mubiru
Judge
8th July, 2020.

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State Attorney: The accused and the deceased belonged to the same extended family and had a longstanding family wrangle over land. On the night of 24th July, 2018 when the deceased left a local bar on foot heading back to his home, he was attacked and assaulted by the accused and several others some of whom are still at large. By that beating, they fractured his ribs, punctured his ribs and cause severe brain tissue damage in the process and left him for dead along the road. The following morning the deceased was found weak at the compound of the accused, and implicated by naming the accused, among other persons, who assaulted him because of the land dispute. The incident was reported to the police who arranged for a post mortem examination of the body. It was found that the cause of death was fractured his ribs, punctured his ribs and cause severe brain tissue damage. A stick used in assaulting the deceased was found and recovered from the scene. The accused was arrested and subjected to medical examination whereupon he was found to be an adult and of sound mind. In his charge and caution statement, he admitted having committed the offence. The deceased died of severe brain tissue damage with haemorrhagic shock. A fractured skull intracranial haemorrhage, fractures ribs and spleen from severe blunt force head and abdominal trauma. Upon examination the accused was found to be of the apparent age of 43 years mentally sound and had no injuries

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State Attorney: I pray to tender in the medical forms together with the charge and caution statement.

Defence Counsel: I have no objection.

Court: They are received as part of the facts and are marked P. Ex.1, P. Ex.2 and P. Ex.3 respectively.

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Stephen Mubiru
Judge
8th July, 2020.

Accused: I have understood the facts. They are correct.

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

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

State Attorney: the aggravating factors are that it was a savage attack involving the use of excessive deadly force.

Counsel for the accused: the mitigation is that he is 44 years of age, he readily pleaded guilty, he is a first time offender, he has six children and a wife to look after, and he is remorseful. He is also responsible for looking after the widow of the deceased and his four children.

Accused: I have nothing to add.

SENTENCE AND REASONS FOR THE SENTENCE

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 30 – 35 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 30 – 35 years to a range of 20 – 25 years' imprisonment, before mitigation.

5 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 eighteen (18) years' imprisonment as befitting the circumstances of the case and the antecedents of the convict.

10 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 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 25th July, 2018 and been in custody since then. I hereby take into account and set off a period of two (2) year as the period the convict has already spent on remand. I therefore sentence the convict to a term of imprisonment of sixteen (16) years to be served starting today.

15 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.

Dated at Gulu this 8th day of July, 2020.

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Stephen Mubiru,
Judge.
8th July, 2020.

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

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TO: AT GULU

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

WARRANT OF COMMITMENT

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WHEREAS on the **8th** day of **July**, 2020 **KOMAKECH MICHAEL** the **1st** Prisoner in Criminal Session Case No.**0053** of the Calendar Year for **2019** 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 **SIXTEEN (16) YEARS' IMPRISONMENT.**

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

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GIVEN under my Hand and the Seal of the court this **8th** day of **July**, 2020.

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JUDGE.