

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA SITTING AT GULU**  
**CRIMINAL CASE No. 0385 OF 2019**

UGANDA ..... PROSECUTOR

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**VERSUS**

1. **OKOT BITEK** }  
2. **OKOT GEORGE** } ..... **ACCUSED**  
10 3. **OKENY PATRICK** }

**Before: Hon Justice Stephen Mubiru.**

**PROCEEDINGS**

15 8<sup>th</sup> July, 2020  
9.30 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 Okot Bitek:** I speak Acholi.

**A2 Okot George:** I speak Acholi.

25 **State Attorney:** we have negotiated a plea bargain and accordingly executed a plea agreement for each of the two accused 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 consequences of signing the plea agreement.  
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**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 two agreements are received and hereby form part of the court record.

.....  
Stephen Mubiru  
Judge  
8<sup>th</sup> July, 2020.

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

**Details;** Murder C/s 188 and 189 of *The Penal Code Act*. It is alleged that the two accused and others some of whom are still at large, on the 17<sup>th</sup> day of February, 2019 at Olinga village in Amuru District murdered Loum Janani.

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**A1:** I have understood the indictment. It is true.

**Court:** A plea of guilty is entered.

.....  
Stephen Mubiru  
Judge  
8<sup>th</sup> July, 2020.

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**A2:** I have understood the indictment. It is true.

**Court:** A plea of guilty is entered.

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.....  
Stephen Mubiru  
Judge  
8<sup>th</sup> July, 2020.

**State Attorney:** The deceased was a boda boda rider operating at Olinga village, Pabbo sub-county in Amuru District. On 16<sup>th</sup> February, 2019 he was hired by the co-accused of the two accused and another man to take them to a forest to cut timber with a power saw. The deceased together with another boda boda rider carried the two men to the forest together with their power saw and later returned to the stage. The following day 17<sup>th</sup> February, 2019 the two men returned to the stage and accused the deceased of having stolen their power saw, which he denied. They took him and his colleague back to the forest where they were joined by the two accused and other people in assaulting him as they demanded he produces the power saw, until he died. They used pangas and sticks in beating the deceased. The incident

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was reported to the police who came to the scene and arrested the accused. The police 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 of death was cardiac-pulmonary arrest due to severe lung and heart contusion following severe blunt force contusion resulting from assault. The two accused were subjected to medical examination whereupon they were found to be adults and of sound mind. A1 was found to be 35 years old and had no injury. A2 was found to be 38 years old with no injury.

**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, P. Ex.2 and P. Ex.3 respectively.

.....  
Stephen Mubiru  
Judge  
8<sup>th</sup> July, 2020.

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

**A2:** I have understood the facts. They are correct.

**Court:** Each of the two 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  
8<sup>th</sup> 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 A1 is 35 years old while A2 is 38 years old, both readily pleaded guilty, are first time offenders, have children and wives to look after. They are remorseful. Both are HIV positive.

**A1:** I pray for forgiveness from court since I have admitted the offence. I am the only child of my mother who now is alone yet I was the one taking care of her. She is also disabled as a result of insurgency.

5 **A2:** I have eight children and I was told my wife died leaving the children. I pray for mercy to get another chance to look after my children.

### **SENTENCE AND REASONS FOR THE SENTENCE**

10 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.

15 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  
20 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*  
25 *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  
30 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.

5 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.

15 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 twenty two (22) years' imprisonment for each of the accused as befitting the circumstances of the case and the antecedents of each of the convicts.

25 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 convicts were charged on 5<sup>th</sup> March, 2019 and have been in custody since then. I hereby take into account and set off one (1) year and four (4) months as the period each of the two convicts has already spent on remand. I therefore sentence each of the two convicts to a term of imprisonment of twenty (20) years and seven (7) months to be served starting today.

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Having been convicted and sentenced on their own plea of guilty, each of the two convicts 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 8<sup>th</sup> day of July, 2020.

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Stephen Mubiru,  
Judge.  
8<sup>th</sup> 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 **8<sup>th</sup>** day of **July**, 2020 **OKOT BITEK** the **1<sup>st</sup>**  
Prisoner in Criminal Session Case No.**0385** 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  
**TWENTY (20) YEARS AND SEVEN (7) MONTHS' IMPRISONMENT.**

**THIS IS TO AUTHORISE AND REQUIRE YOU**, the Superintendent  
to receive the said **OKOT BITEK** 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 **8<sup>th</sup>** day of  
**July**, 2020.

.....  
**JUDGE.**

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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 **8<sup>th</sup>** day of **July**, 2020 **OKOT GEORGE** the **2<sup>nd</sup>**  
Prisoner in Criminal Session Case No.**0385** 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  
**TWENTY (20) YEARS AND SEVEN (7) MONTHS' IMPRISONMENT.**

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**THIS IS TO AUTHORISE AND REQUIRE YOU**, the Superintendent  
to receive the said **OKOT GEORGE** 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 **8<sup>th</sup>** day of  
**July**, 2020.

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**JUDGE.**