

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA AT KAMPALA
(Coram: Mwangusya, Opio Aweri, Mugamba, Buteera,
Nshimye; JJSC)

CRIMINAL APPEAL NO.69 OF 2018

BATESA MALIJANI:.....APPELLANT

VERSUS

UGANDA:..... RESPONDENT

JUDGMENT OF THE COURT

The appellant, Batesa Malijani, was convicted by the High Court on his own plea of guilty to three counts of murder contrary to sections 188 and 189 of the Penal Code Act. He was sentenced to imprisonment of 20 years on count one, 25 years on count two and 30 years on count three. The sentences were to run consecutively. In all it was to be 75 years' imprisonment.

Background

The background to this appeal as was rightly stated by the Court of Appeal is that the appellant and the deceased persons (Naume Nakagolo, Nabirye Shakira and Abubakari Mpindi) lived together in their home in Kalyowa village, Luuka District. The appellant had a misunderstanding with his wife, Naume Nakagolo, arising from his suspicion that the wife, was having an affair with a one Swaliki Kisibo. On the fateful day, all the four members of the household left their home for the garden. Naume walked ahead of the appellant carrying one of the children, Mpindi, while the other

child, Nabirye, walked on. Along the way, the appellant claimed to have seen Kisibo who, according to the appellant, ran away on seeing him. It was then the appellant attacked his wife cutting her repeatedly with a panga till she died before turning on the two children, Nabirye Shakira and Abubakari Mpindi, who he fatally cut using the same panga. After killing the three people the appellant fled to Nakabugu Police Station and reported that he had killed the deceased persons. He handed over to police the panga he said he had used to kill the deceased. The appellant was indicted and upon pleading guilty he was convicted and sentenced as mentioned earlier.

On appeal to the Court of Appeal the original sentence was set aside but was substituted with terms of imprisonment of 14 years, 9 months and 10 days on each of the 3 counts of murder. The sentences were to run consecutively, totalling to 44 years and 4 months imprisonment.

Being dissatisfied with the decision of the Court of Appeal, the appellant appealed to this Court against sentence only.

The single ground of appeal states:

“The learned Justices of Appeal erred in law when they sentenced the appellant to an illegal sentence.”

Representation

Ms. Wakabala Susan represented the appellant on a State brief. Mr. Mulindwa Badru, Assistant DPP, appeared for the respondent. The appellant was present in Court.

Both the appellant and respondent filed written submissions in court. At the hearing of the appeal both sides adopted their written submissions earlier filed with court. Both sides requested that the written submissions be related to when considering this appeal. We proceed to do so.

Submissions

Counsel for the appellant submitted that the Justices of Appeal relied on a wrong principle to arrive at the said sentence. She contended that the appellant pleaded guilty right from the time he came under police custody. She noted that the appellant went to police immediately after the incident. She added that at the trial the appellant maintained his plea of guilty and thereby saved court's time and government resources, which would not have been the case if a full trial had been held. Counsel argued that a plea of guilty should be considered as a sign of remorse on the side of the accused person. She went on to say that the sentencing range for a plea of guilty should be more lenient than that of an accused person who goes for a full trial and is finally found guilty.

Counsel reiterated that the Court of Appeal should not have compared the instant case to those decided cases where appellants went on to full trial since the appellant did not undergo trial but chose to plead guilty. She noted that the appellant owned up to his acts from the very start.

Counsel further argued that had decided cases involving accused persons who had pleaded guilty been considered, a more appropriate sentence would have been reached.

She prayed court to take into consideration the appellant's plea of guilty, set aside what she referred to as the illegal sentence and substitute it with a legal and more appropriate sentence given his plea of guilty.

On the other hand, counsel for the respondent opposed the appeal and supported the judgment of the Court of Appeal concerning sentence. He submitted that under **paragraph 17 of the Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, Legal Notice No.8/2013**, a person convicted for murder would have been sentenced to death as the circumstances of the instant case put it within the ambit of paragraph 18 of the "rarest of rare" cases. He submitted that the trial Judge took note of that but that she opted to sentence the appellant to 75 years after taking into account the mitigating factors.

According to counsel for the respondent, by reducing the sentence to 44years and 4 months the Court of Appeal was lenient. He added that although the Court of Appeal relied on decided cases where the accused persons were convicted and sentenced after a full trial, that in itself did not make the sentence illegal since aggravating and mitigating factors were taken into account.

He prayed Court to dismiss the appeal for lack of merit and for abuse of the legal process.

Analysis and resolution

The complaint that stands to be addressed in this appeal is that the learned Justices of Appeal sentenced the appellant to an illegal sentence culminating in an error in law.

The Court of Appeal Justices in making a substitution to the earlier sentence of 75 years made the following observation:

'... it is clear from the above that previous decisions of this court that the sentence for murder ranges between 15 years to 30 years depending on the facts and circumstances of each case. Having taken into account both the aggravating and mitigating factors in this appeal as set out above and the range of sentences in cases of murder, we find that a sentence of 17 years for each count meets the ends of justice.

However, we note that the appellant had been in pre-trial custody for a period of 2 years, 2 months and 20 days. Pursuant to Article 23(8) of the Constitution, we deduct that period from the 17 years on each count and sentence the appellant to imprisonment for 14 years, 9 months and 10 days on each of the 3 counts of murder. The sentences are to run consecutively for a total of 44 years and 4 months from the date of conviction, that is, 04/06/2014.'

The appellant's complaint is that a sentence of 14 years, 9 months and 10 days on each of the 3 counts of murder to run consecutively for a total of 44 years is illegal. To support that argument it was submitted that since the appellant pleaded guilty from the start and did not waste court's time, court ought to have been more lenient in sentencing him.

With due respect, this submission by counsel for the appellant does not in any way support allegations of illegality. **Black's Law**

Dictionary, 8th edition defines 'illegal' to mean forbidden by law or unlawful. In other words, something contrary to the law.

Existence of such illegality automatically gives cause for the interference with a sentence of a lower court by an appellate court.

In **Kiwalabye Bernard v Uganda, Criminal Appeal No. 143 of 2001**, this Court had this to say:

'The Appellate Court is not to interfere with the sentence imposed by a trial Court which has exercised its discretion, unless the exercise of the discretion is such that it results in the sentence being imposed to be manifestly excessive or so low as to amount to a miscarriage of justice or where a trial court ignores to consider an important matter or circumstance which ought to be considered while passing the sentence or where the sentence imposed is wrong in principle.'


In a related case it was stated in **Jackson Zita v Uganda, Criminal Appeal No. 19 of 1995 (SC)**, that an appellate court will only interfere with the sentence of the trial court if there is an illegality such as where the trial court acted contrary to the law or upon a wrong principle, or overlooked a material factor. The appellate court will also interfere if the said sentence is harsh and/or manifestly excessive or inadequate.

Pleading guilty at the earliest opportunity saves court time by avoiding a lengthy and costly trial and is a mitigating factor for the accused. Evidently the trial Judge while passing sentence

considered the fact that the appellant readily pleaded guilty to the offence charged a mitigating factor, persuading her not to mete out the maximum penalty which in her view, otherwise, would be fitting in the circumstances. Instead she meted out 20, 25 and 30 years respectively to run consecutively. The Court of Appeal considered that sentence passed by the trial Judge on the higher end considering all mitigating factors as well as the previous sentences handed down for murder. Those included cases which range between 15 and 30 years' imprisonment. The Court of Appeal reduced the appellant's sentence to 14 years and 4 months imprisonment on each count after it deducted the pre-trial custody period of 2 years, 2 months and 20 days, pursuant to Article 23(8) of the Constitution. Those sentences were to run consecutively. The appellant's sentence in total was thus reduced from 75 years to 44 years and 4 months. In our view the Court of Appeal addressed all the would be complaints concerning the appellant's sentence and there is no illegality to necessitate this court's interference. In effect the sentence handed down by the Court of Appeal is legal and we uphold the same.

The Appeal is dismissed.

Dated at Kampala this 5th day of July.....2019


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JUSTICE ELDAD MWANGUSYA,
JUSTICE OF THE SUPREME COURT

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**JUSTICE OPIO AWERI,
JUSTICE OF THE SUPREME COURT**

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**JUSTICE PAUL.K MUGAMBA,
JUSTICE OF THE SUPREME COURT**

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**JUSTICE RICHARD BUTEERA,
JUSTICE OF THE SUPREME COURT**

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**JUSTICE AUGUSTINE NSHIMYE
JUSTICE OF THE SUPREME COURT**