

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA AT KAMPALA
[CORAM: ARACH-AMOKO, MWANGUSYA, OPIO-AWERI,
MUGAMBA, BUTEERA JJSC]

CRIMINAL APPEAL NO. 72 OF 2018

KADDU KAVULU LAWRENCE ::::::::::::::::::::::::::::::::::::::: APPELLANT

VERSUS

UGANDA ::::::::::::::::::::::::::::::::::::::: RESPONDENT

(An appeal from the judgment of the Court of Appeal at Kampala before Remmy Kasule, Barishaki Cheborion, and Hellen Obura JJA dated 28^h June, 2018 in Criminal Appeal No.344 of 2010)

JUDGMENT OF THE COURT

This is a second appeal. The appellant, Kaddu Kavulu Lawrence, was convicted of Murder contrary to Sections 188 and 189 of the Penal Code Act and sentenced to suffer death.

Background

The facts of the case briefly are that the appellant and a one Scovia Balyama Nansubuga, who testified as Pw5, cohabited for about four years living in Mawotto village, Goma Sub-County, Mukono District. That relationship came to an end and the two separated. Scovia Balyama Nansubuga then entered another relationship with the deceased who she started living with in the same village. On the night of 24th January 2008, between 9pm and 10pm, the appellant went to the house of the deceased, Sande Byangoma Paul, armed with a

panga. He found the deceased standing at the entrance to his house in the company of the said Scovia Balyama Nansubuga. The appellant then inflicted fatal injuries to the deceased using the panga he carried. Consequently the appellant was arrested and charged with the murder of the deceased. He was tried, convicted and sentenced as earlier mentioned.

Being dissatisfied with that decision he appealed to the Court of Appeal against both conviction and sentence. The conviction was upheld while the sentence of death was substituted with a sentence of life imprisonment. The appellant now appeals to this Court against the sentence of life imprisonment imposed by the Court of Appeal.

The sole ground of appeal states as follows:-

The learned Justices of Court of Appeal erred in law when they sentenced the appellant to life imprisonment without taking into account other mitigating factors which rendered the sentence illegal and manifestly excessive.

Representation

Mr. Andrew Ssebugwawo represented the appellant on state brief. Ms. Faith Turumanya, Assistant DPP, appeared for the respondent. The appellant was present at the hearing.

Both the appellant and the respondent filed written submissions in court. At the hearing of the appeal both sides adopted their written

submissions alluded to earlier and requested that the submissions be related to when considering this appeal. In addition both sides had occasion to highlight their submissions. We proceed to consider the arguments as a whole.

Submissions

Counsel for the appellant in support of the ground of appeal submitted that the justices of the Court of Appeal while passing sentence did not take into account the period the appellant spent on remand or in legal custody as is mandated under Article 23(8) of the Constitution.

It was counsel's further submission that it is not enough to just take note of the remand period but that it should be actually taken into consideration while arriving at a decision. He relied on the authority of **Kizito Senkula vs Uganda, Supreme Court Criminal Appeal No. 24 of 2001.**

Counsel also submitted that the appellant's mitigating factors were overlooked by the Court of Appeal while passing sentence. For instance he cited the appellant's advanced age, the fact that the appellant suffers from a chronic ailment of ulcers and the fact that the appellant has a family to look after.

He added that in a similar case of **Mbunya Godfrey vs Uganda, Supreme Court Criminal Appeal No. 4 of 2011** where the appellant had originally been sentenced to suffer death, this Court, after it considered cases of a similar nature, sentenced the appellant to 25

years imprisonment. Counsel added that similar consideration was made in the case of **Akbar Hussein Godi vs Uganda, Supreme Court Criminal Appeal No. 3 of 2013** where court confirmed a sentence of 25 years imprisonment. Counsel submitted that in **Susan Kigula vs Uganda, Constitutional Appeal No. 3 of 2006** when the file was sent back to the High Court for mitigation, the appellant was sentenced to 20 years imprisonment.

Counsel prayed that the appeal be allowed and that this court sets aside the sentence passed by the Court of Appeal. He prayed further for this court to reduce the appellant's sentence by taking the period spent on remand into account.

The learned Assistant Director of Public Prosecutions opposed the appeal. In response to the submission that the justices of the Court of Appeal did not take into account the period the appellant spent on remand at the time of sentencing, it was her submission that Article 23(8) of the Constitution applies neither to a sentence of life imprisonment nor to a sentence of death. She said that considering the period spent on remand is for 'a term of imprisonment'. She added that the provision applies to a period of time which is deductible. She argued that as such the learned justices of the Court of Appeal erred in no way.

Counsel in further submission stated that the Court of Appeal justices took into consideration the appellant's mitigating factors and that those are duly reflected in their judgment.

In support of the sentence of life imprisonment, counsel submitted that the maximum sentence for murder is death but that the appellant was not sentenced to death but to life imprisonment. Counsel argued that the sentence passed was legal given that it is even lower than the maximum penalty. She asked court to dismiss the appeal and uphold the sentence of life imprisonment.

Court's consideration

This Court should be hesitant to alter a sentence imposed by a sentencing court. Indeed this court in **Kiwalabye Bernard vs Uganda, Criminal Appeal No. 143 of 2001**, had this to say:

'The appellant court is not to interfere with the sentence imposed by a trial court which has exercised its discretion on sentence unless the exercise of the discretion is such that it results in the sentence 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 circumstances which ought to be considered while passing the sentence or where the sentence imposed is wrong in principle.'

From the record, the appellant was initially sentenced to death. He successfully appealed to the Court of Appeal and his sentence was reduced to life imprisonment. The appellant's complaint before us is that the justices of the Court of Appeal did not take into consideration the appellant's mitigating factors thus rendering the sentence illegal

and manifestly excessive. The purported justification for this complaint is that the period the appellant spent on remand was not taken into account by the Court of Appeal justices during sentencing as is mandated under Article 23(8) of the Constitution thus rendering the sentence illegal.

It is mandatory for a trial court sentencing a convicted person to take into account the period spent in custody by an accused person.

Where a trial judge fails to comply with Article 23 (8) of the Constitution, the Supreme Court on its own motion can correct the sentence by considering the period that was spent in lawful custody before conviction. See **Umar Sebidde vs Uganda, Criminal Appeal No. 22 OF 2002 (SC)**, **Magezi Gad vs Uganda, Supreme Court Criminal Appeal No. 17 of 2014**.

Article 23 (8) of the Constitution provides as follows:-

"Where a person is convicted and sentenced **to a term of imprisonment** for an offence, any period he or she spends in lawful custody in respect of the offence before the completion of his or her trial shall be taken into account in imposing the term of imprisonment". Emphasis added.

In **Magezi Gad vs Uganda, (Supra)**, this Court stated:

'We are of the considered view that like a sentence for murder, life imprisonment is not amenable to Article 23 (8) of the Constitution. The above Article applies only where sentence is for a term of imprisonment ie a quantified

period of time which is deductible. This is not the case with life or death sentences.

The above dicta should put to rest the appellant's query on this issue. We find it needless to discuss it further.

In the instant case the Court of Appeal justices re-stated and reconsidered the mitigating factors presented on behalf of the appellant before the trial judge. The justices were indeed persuaded that these were outweighed by the aggravating factors. Nevertheless on other consideration they reduced the sentence from death to life imprisonment. We find no basis for this argument which we dismiss given that the Court of Appeal properly considered the mitigating factors before passing its sentence.

Counsel for the appellant presented to court related cases where the appellants were sentenced to lesser prison terms and in his view the Court of Appeal ought to have taken those cases into consideration and given the appellant a somewhat similar sentence. It is our view that an appropriate sentence is a matter for the discretion of the sentencing court. Each case presents its own facts upon which a court exercises its discretion.

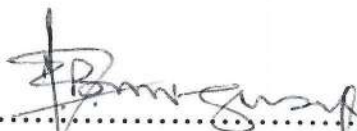
The offence of murder attracts a maximum sentence of death and the appellant was given a sentence of life imprisonment which is a legal sentence. We find no reason to disturb the sentence and uphold the same.

The appeal lacks merit. It is dismissed.

Dated at Kampala this 22nd day of August 2019



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**LADY JUSTICE STELLA ARACH-AMOKO,
JUSTICE OF THE SUPREME COURT**



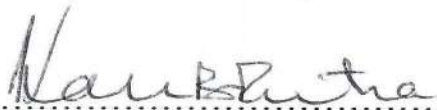
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**JUSTICE ELDAD MWANGUSYA,
JUSTICE OF THE SUPREME COURT**



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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**