

**THE REPUBLIC OF UGANDA  
IN THE SUPREME COURT OF UGANDA AT KAMPALA**

**CRIMINAL APPEAL NO 34 OF 2017**

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(CORAM: ARACH-AMOKO, MWONDHA, BUTEERA, JJSC; NSHIMYE,  
TUMWESIGYE, AG. JJSC)

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**BETWEEN**

**OJANGOLE PETER :::APPELLANT**

**AND**

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**UGANDA:::RESPONDENT**

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[Appeal from the decision of the Court of Appeal of Uganda by Musoke,  
Barishaki, Mugamba, JA in Criminal Appeal No. 552 of 2014 dated 22<sup>nd</sup> day  
of August 2017]

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**JUDGEMENT OF THE COURT**

**Background.**

30 This is a second appeal. The appellant and 3 Others were indicted for Aggravated  
Robbery in the High Court. They were tried and the appellant and one Olupot  
Sharif were convicted and sentenced to death.

The two appealed to the Court of Appeal which confirmed the conviction and the  
sentences of death.

Being one of the cases decided before **Attorney General versus Susan Kigula and 417 Others, SC Constitutional Appeal No.03 of 20026** the case was referred back to the High Court for mitigation of sentence whereupon, the appellant's sentences of death were substituted for by sentences of 40 years imprisonment each. They appealed to the Court of Appeal against the 40 years sentences.

The Court of Appeal reduced the sentences of 40 years to 35 years of imprisonment. The Court deducted the period spent on remand by the appellants which was two years and a half. The Court of Appeal sentenced the appellants to 32 years effective from the date of conviction.

The appellants appealed to this Court against the sentence. They were both represented by learned counsel, Susan Wakabala on State brief.

On the 4/7/19 the appeal came before us for hearing. Counsel for the appellants Ms Wakabale informed Court that she had discussed the appeal with her clients and they agreed that the appeal lacked merit. They agreed, therefore, to withdraw the appeal. Ms Kizza appearing for the State had no objection. Mr. Olupot Sharif confirmed and informed Court that he wished to withdraw his appeal and serve his sentence. Court granted his request and his appeal was accordingly dismissed.

Mr. Ojangole Peter on the other hand, disagreed with counsel and maintained his appeal. The appeal was adjourned to 16/7/2019 to get another counsel.

When the appeal resumed for hearing he had not got another advocate and chose to argue his own appeal. Court allowed him to proceed.

The appellant prayed this Court to reduce the sentence of 32 years imprisonment to which he was sentenced. He explained that he had young children at home. He had served 17 years and he remained with seven years to serve. He stated that the period of 17 years that he had already served was enough punishment and that he should be excused from serving the remaining seven years.

Counsel for the respondent in response submitted that the appellant and the co-accused had murdered an innocent person (a lady) in the process of robbery. The sentence of 32 years imposed by the Court of Appeal was an appropriate sentence and should not be interfered with by this Court.

**Consideration by Court.**

This is an appeal against sentence only. We have perused the two lower court's records. The appellant and another were first sentenced to death. This was reduced to 40 years by the High Court in a resentencing procedure after the **Susan Kigula case (supra)**.

On appeal to the Court of Appeal this was reduced to 35 years which was reduced further to 32 after deducting the period spent remand.

The appellant prayed this Court to reduce this sentence because he had children to look after at home and he had already served 17 years which he viewed as adequate punishment.

This Court as an appellate court has power to interfere with a sentence imposed by a lower court only in accordance with the law. The power of this Court to interfere

with a lower court sentence was stated in the case of **Ssekitoleko Yudah and Others versus Uganda, SCCR No.33 of 2014** as follows:-

5           **“An appropriate sentence is a matter for discretion of the sentencing Judge each case presents its own facts upon which a Judge exercises his discretion. It is the practice that that as an appellate court, this Court will not normally interfere with the discretion of the sentencing Judge unless the sentence is illegal or unless the Court is satisfied that the sentence imposed by the trial Judge was manifestly so excessive as to amount to an injustice.”**

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The Court would only interfere with sentence awarded by the lower court if it was shown that the sentence was illegal or manifestly excessive or so low as to amount to an injustice.

15       The appellant here is raising issues that do not relate to the sentence imposed by the lower court. The fact that he has 7 children to look after and that he has other family obligations could have been raised at the level of the trial court as issues for consideration as mitigating factors.

20       We note that the trial judge considered both the mitigating factors and the aggravating factors raised by the appellant and the prosecutor before arriving at the sentence he awarded. The Court of Appeal too considered those factors and arrived at a sentence of 32 years.


25       At this level we would not be in position to re-consider the mitigating and aggravating factors that were considered by the two lower courts.

In the instant case, we find that the sentence of 32 years imprisonment imposed by the Court of Appeal was legal. We do not consider it to be too high to amount to an injustice justifying interference by this Court.

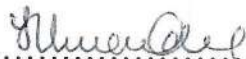
5 In the result, we find no merit in the appeal and we dismiss the same. We uphold the sentence of the Court of Appeal.

Dated in Kampala.....29<sup>th</sup>.....day of August.....2019.


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Hon. Justice S. Arach-Amoko  
JUSTICE OF THE SUPREME COURT

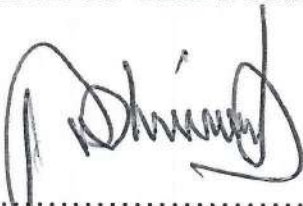
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Hon. Justice F. Mwendha  
20 JUSTICE OF THE SUPREME COURT

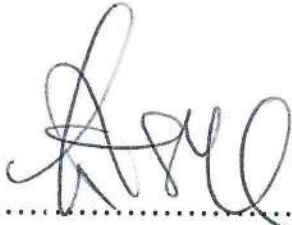
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Hon. Justice R. Buteera  
JUSTICE OF THE SUPREME COURT

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Hon. Justice A.S. Nshimye  
AG. JUSTICE F THE SUPREME COURT

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A handwritten signature in black ink, appearing to read 'J. Tumwesigye', written in a cursive style. The signature is positioned above a horizontal dotted line.

5 Hon. Justice J. Tumwesigye  
AG. JUSTICE OF THE SUPREME COURT