THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA

AT KAMPALA

(CORAM: ARACH-AMOKO; MWONDHA; MUGAMBA; BUTEERA; CHIBITA; J.J.S.C)

CRIMINAL APPEAL NO: 33 OF 2016

BETWEEN

MATSIKO EDWARD :: APPELLANT

AND

UGANDA :: RESPONDENT

(Appeal from the decision of the Court of Appeal, (Remmy K. Kasule, Solome Balungi Bossa and Hellen Obura JJA in Criminal Appeal No. 125 of 2010 dated 26th July 2016).

JUDGMENT

This appeal is before us on a second appeal. The appellant was initially indicted for murder, contrary to sections 188 and 189 of the Penal Code Act. He was eventually convicted of manslaughter, contrary to sections 187 and 190 of the same Act and was sentenced to 18 years imprisonment. He appealed the sentence in the Court of Appeal where the sentence awarded by the High Court was set aside on the ground that it was illegal. Instead the Court of Appeal handed down a fresh sentence of 18 years imprisonment. It is that sentence this appeal is against.

The single ground of appeal reads:

`1. ***That the learned Justices of Appeal erred in law when they sentenced the appellant to an illegal sentence'.***

Background

The genesis of this appeal was well summarized by the Court of Appeal as follows. On 6th September 2006 at Katagata cell in Ntungamo District, the appellant killed Kashemeire Jovuline by spearing her to death. According to Tumuhimbise Francis (PW 4), the local area chairman and neighbour, the appellant and the deceased were seen drinking alcohol together that evening shortly before the appellant killed the deceased. The deceased left the drinking place first and returned home around 8:30pm. The deceased served him food and as he ate, he stated that he was going to kill a person. He mentioned the deceased. He then entered the bedroom where the deceased was lying, sick. The appellant asked the deceased for the key of his suitcase and the deceased refused to give it to him. He looked for fire and burnt the suitcase, apparently to gain entry inside. When he did not find the money he expected to be inside, he picked a spear from the same room and brought it to the sitting room. Stuart, the appellant's son took it away from him. The appellant then chased his daughter Komwizo Marion (PW3) and son Stuart out of the room, closed the door and speared the deceased. PW3 and Stuart raised an alarm but by the time the neighbours arrived the deceased was dead.

Representation

Mr. Arthur Ayorekire represented the appellant on a State brief. Mr. Charles Bwiso, Acting Principal State Attorney, appeared for the respondent.

Submissions

Both counsel for the appellant and for the respondent filed their written submissions prior to the hearing of this appeal. Both applied to adopt their

respective submissions. Counsel briefly highlighted poignant issues contained in the written submissions aforesaid.

Submissions

Mr Ayorekire in his submissions on behalf of the appellant was emphatic that the sentence handed down to the appellant by the Court of Appeal was illegal because the Court did not show that it had taken the period the appellant had spent on remand into account by subtracting that period from the sentence they finally meted out. He argued that this is a requirement of Article 23(8) of the Constitution. He submitted that this Court's decision in **Rwabugande Moses vs Uganda, SCCA No. 25 of 2014** is to this effect. He added that the period of 4 years the appellant had spent on remand was never credited to the accused as is required by law. Counsel went on to argue that given that the appellant was on remand for 4 years, if that period is added to the sentence of 18 years it would add up to 22 years the appellant would in the end have spent in prison. Counsel argued that since the maximum penalty for manslaughter is life imprisonment the maximum period of incarceration would be 20 years. He contended that this is what section 86(3) of the Prisons Act, Act 17 of 2006 provides for. He submitted that when the sentence of 18 years is added to the 4 years the appellant spent on remand the resulting 22 years would be in excess of the ultimate penalty of life imprisonment. In the circumstances, Counsel argued, a sentence of 14 years imprisonment, starting from the day the appellant was convicted, should be handed down to the appellant.

In response the learned Acting Principal State Attorney opposed the appeal. He agreed with the finding of the Court of Appeal that when passing sentence the trial Judge had not taken into account the period the appellant had spent on remand. He said that the remand period extended from 21st September 2006 to 29th June 2010. He computed that span to be of 3 years and 9 months. It was his

contention that the Justices of the Court of Appeal had mentioned in their judgment that they had taken into account the period the appellant had spent on remand. Regarding the imperative of the case of **Rwabugande Moses vs Uganda (supra)** to this appeal, counsel argued that the decision of the Court of Appeal preceded this Court's verdict in **Rwabugande Moses vs Uganda (supra)** in time and that as such the latter could not have been an available authority. He urged that the sentence passed by the Court of Appeal was legal and that as such this appeal should be dismissed. It was his further contention that the Prisons Act is not applicable as alleged by the appellant.

Consideration

We have considered the arguments from both the appellant and the respondent regarding the legality of the sentence handed down by the Court of Appeal.

It is trite that on appeal Courts will not interfere with the sentence earlier imposed unless there is urgent reason to do so. There is a dearth of authorities to this effect. **Kamya Johnson Wavamunno vs Uganda, SCCA No. 16 of 2000** is one such. There court stated:

> **"It is well settled that the Court of Appeal will not interfere with the exercise of discretion unless there has been a failure to exercise discretion, or a failure to take into account a material consideration, or taking into account an immaterial consideration or an error in principle was made. It is not sufficient that the members of the court would have exercised their discretion differently".**

As the cornerstone of his appeal the appellant is of the view that in handing down sentence the Court of Appeal did not take into account the period he had spent on remand. Proved in the affirmative this would certainly render the

sentence illegal given the imperative of Article 23(8) of the Constitution. It provides:

> **"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".**

The judgment of the Court of Appeal contains the following passage:

> **"We now proceed to sentence the appellant afresh. We note that the appellant is a first offender. He was on remand for 3 years and 9 months. At the time of sentence, he was 52 years old. He has children and suffers from TB. He is repentant. However, on the aggravating side, the appellant committed a serious crime. He killed his wife and mother of his children, in a reckless, unfeeling and brutal manner. She had looked after him and his children and this was of no consequence to him. Taking all the above into account, we sentence the appellant to the same 18 years imprisonment".**

The emphasis above is added. It emerges that amongst the factors that were taken into account before passing sentence was the period of 3 years and 9 months the appellant spent on remand. To say otherwise would be incorrect.

Nevertheless the appellant argues further that Court should have acted in concert with the requirement in **Rwabugande Moses vs Uganda (supra)** and effected an arithmetical deduction of the period the appellant spent on remand. A look at the sequence of events in this matter suffices. The Court of Appeal passed sentence in this matter on 26th July 2016. **Rwabugande Moses vs Uganda (supra)** was decided later on 3rd March 2017. There is no way it could have served as a precedent to a matter that preceded it in time. Indeed before the advent of **Rwabugande Moses vs Uganda (supra)** the position of the law was

that as long as courts indicated that they had taken the period spent on remand into account there was no need to make an arithmetical deduction. The cases of **Kizito Senkula vs Uganda, SSCA No. 24 of 2001** and **Bukenya Joseph vs Uganda, SSCA No. 17 of 2010** are to this effect. In **Latif Buulo vs Uganda, SCCA No. 31 of 2017** this Court cleared any prevailing doubt when it stated:

> **"The Court's decision in Abelle above, is to the effect that this Court and the Courts below have to follow the position of the law as stated in Rwabugande Moses vs Uganda (supra) for only those cases decided after the Court's decision in Rwabugande, ie 3rd of March 2017. For the cases decided before Rwabugande, it was sufficient for the sentencing Judge to demonstrate that the period spent on remand was taken into account while sentencing as this was the position of the law before this Court departed from its earlier decisions".**

The Court of Appeal followed the law prevalent at the time it passed sentence. It cannot therefore be faulted for having failed to comply with the law.

The appellant finally advanced the argument that the sentence passed was illegal because it was not in conformity with the Prisons Act. To this end section 86(3) of the Prisons Act was cited. That provision reads:

> *'For the purpose of calculating remission of sentence, the imprisonment for life shall be deemed to be twenty years' imprisonment'.*

In **Tigo Stephen vs Uganda, SCCA No. 8 of 2009,** this Court held:

> **"The Prisons Act and Rules made hereunder are meant to assist the Prison authorities in administering prisons and in particular sentences imposed by the Courts. The Prisons Act does not prescribe sentences to be imposed for defined offences. The sentences are contained in the Penal Code and other penal statutes and the sentencing powers of courts**

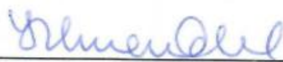
are contained in the Magistrate's Courts Act and the Trial on Indictment Act and other Acts prescribing jurisdiction of Courts".

Needless to say, provisions of the Prisons Act are irrelevant to the sentencing process. However the Act will be found invaluable by the Prisons authorities and others affected for purposes unique to prisons administration. As such, the appellant's argument is not sustainable and should fail.

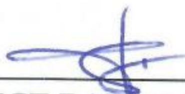
Given that no merit has been found in this appeal, it is dismissed accordingly.

Dated at Kampala this ....3rd........... day of ....July...........2020.

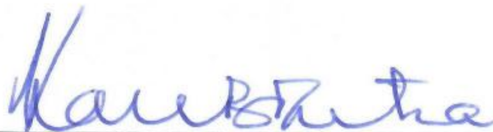
HON. LADY JUSTICE STELLA ARACH -AMOKO
JUSTICE OF THE SUPREME COURT



HON. LADY JUSTICE FAITH MWONDHA
JUSTICE OF THE SUPREME COURT



HON. JUSTICE PAUL MUGAMBA
JUSTICE OF THE SUPREME COURT



HON. JUSTICE RICHARD BUTEERA
JUSTICE OF THE SUPREME COURT

HON. JUSTICE MIKE CHIBITA
JUSTICE OF THE SUPREME COURT