

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

(CORAM: ARACH -AMOKO, OPIO AWERI, MWONDHA, MUGAMBA,
BUTEEERA JJ.SC)

CRIMINAL APPEAL NO. 45 OF 2016

BWARENGA ADONIA.....APPELLANT

VERSUS

UGANDA.....RESPONDENT

(Appeal against the Judgment of the Court of Appeal at Mbarara delivered on the 6th December 2016 by Kakuru, Byabakama and Owiny Dollo JJA)

JUDGMENT OF COURT

This is a second appeal arising from the judgment of the Court of Appeal. The appellant was indicted on two counts of murder contrary to sections 188 and 189 of the Penal Code Act. He was tried, convicted and sentenced to suffer death.

Background:

The facts as summarized by the Court of Appeal are that at Murubindi Camp in Kacecere Parish, Bufundi sub-county, Kabale District, a man killed his wife whom he had suspected of infidelity. Soon after, he went into hiding. In response to that killing, the appellant and his cohorts, as relatives of the deceased woman, went on rampage in the village and surrounding areas. Armed with spears and pangas, they orchestrated a senseless spate of killing of a number of relatives of the wife killer, as well as relatives of the alleged

male adulterer. None of those had participated in any way or borne responsibility for the killing of the woman.

In their execution of the unjustified acts of revenge, the appellant was identified as having participated in the killing of two persons; for which he was indicted, tried, convicted and sentenced to suffer death by the High Court.

The Court of Appeal varied the death sentence to 30 years imprisonment. He appealed to this Court on one ground as follows:

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

Representation:

Mr. Arthur Ayorekire represented the appellant. The respondent was absent.

Appellant's submissions:

Counsel for the appellant submitted that the sentence imposed by the Court of Appeal was illegal because the Court did not show that it had taken into account the period the appellant had spent on remand by deducting it from the final sentence. Counsel relied on the case of **Rwabugande Moses Vs Uganda, SCCA No. 25/2014**.

He prayed that this Court finds the sentence illegal and substitutes it with a legal sentence.

There were no submissions from the respondent according to the record of this Court.

Consideration of the Appeal:

This is a second appeal. It is against sentence only and the Court is cognizant of its duty as a second appellate Court. On a second appeal against sentence, this Court's role is restricted to deciding on the legality of a sentence. In this regard, section 5(3) of the Judicature Act provides as follows:

In the case of an appeal against a sentence and an order other than one fixed by law, the accused person, may appeal to the Supreme Court against the sentence or order, on a matter of law, not including the severity of the sentence. (Emphasis added)

The appellant's counsel argued that the sentence imposed by the Court of Appeal is illegal because it did not take into account the period spent on remand in an arithmetical manner as set out in this Court's decision in **Rwabugande Moses Vs Uganda (Supra)**.

In varying the sentence of the appellant from the death penalty to 30 years imprisonment, the Court of Appeal held as follows:

We believe that had the trial Judge , in the exercise of his discretion, sentenced the appellant to a custodial sentence less than imprisonment for life, he would have to take into consideration the fact that the appellant had been on remand for a period of four years before conviction; which we hereby take into account.

Upon weighing the gravity of the crime for which the appellant was convicted, against the factors presented to the Court in mitigation, it is our view that a long term of imprisonment would serve as an appropriate punishment in the circumstances of the case. We therefore set aside the death sentence and instead impose a sentence of 30 (thirty) years in prison on each of the two counts of murder for which the appellant was convicted. (Emphasis added)

It is evident from the above excerpt that the Court of Appeal took into account the period the appellant spent on remand before sentencing him to 30 years imprisonment.

It is pertinent to point out at this stage that the above judgment of the Court of Appeal was delivered on the 6th day of December 2016 while this court's decision in **Rwabugande Moses Vs Uganda** was delivered on 3rd March 2017.

In **Rwabugande Moses vs Uganda** (Supra), this Court held:

It is our view that the taking into account of the period spent on remand by a Court is necessarily arithmetical. This is because the period is known with certainty and precision; consideration of the remand period should therefore necessarily mean reducing or subtracting that period from the final sentence. That period spent in lawful custody prior to the trial must be specifically credited to an accused.

However, in **Abelle Asuman vs Uganda**, SCCA No, 66 of 2016 *this Court pointed out as follows:*

We find also that this appeal is premised on a misapplication of the decision of this Court in the case of Rwabugande (supra) which was decided on 3rd March 2017.

It its judgment this Court made it clear that it was departing from its earlier decision in Kizito Senkula vs Uganda SCCA No.24/2001; Kabuye Senvewo vs Uganda SCCA No.2 of 2002; Katende Ahamed vs Uganda SCCA No.6 of 2004 and Bukenya Joseph vs Uganda SCCA No. 17 of 2010 which held that “taking into consideration of the time spent on remand does not necessitate a sentencing Court to apply a mathematical formula.”


This Court and the Courts below before the decision in Rwabugande (supra) were following the law as it was in the previous decisions above quoted since that was the law then.

In the premise, we find that this appeal is premised on a misapplication of the decision of this Court in **Rwabugande Moses vs Uganda** (supra). The Court of Appeal took into account the period the appellant had spent on remand in accordance with the law and judicial precedent at the time. The Court of Appeal cannot be faulted.


In the result, we find nothing illegal about the sentence as varied by the Court of Appeal. We accordingly uphold the sentence of 30 years imprisonment imposed by the Court of Appeal.

This appeal is hereby dismissed.


Dated at Kampala this.....07th.....day of.....August.....2020.




Hon. Justice Arach- Amoko
Justice of the Supreme Court.




Hon. Justice Opio Aweri
Justice of the Supreme Court.



Hon. Justice Mwendha
Justice of the Supreme Court.



Hon. Justice Mugamba
Justice of the Supreme Court.



Hon. Justice Buteera
Justice of the Supreme Court.