

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CRIMINAL APPEAL NO 0315 OF 2010

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1. OSHERURA OWEN
2. TUMWESIGYE FRANK:..... APPELLANTS

VERSUS

10 **UGANDA:..... RESPONDENT**

(Appeal from the judgment of the High Court Mbarara before
the Honourable Justice Bashaija Andrew
dated 26th April 2012 in Criminal Session Case No.114 of 2010)

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CORAM: HON. MR. JUSTICE REMMY KASULE, JA
HON. MR. JUSTICE RICHARD BUTEERA, JA
HON. LADY JUSTICE F.M.S. EGONDA NTENDE, JA

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JUDGMENT OF THE COURT

25 The two appellants were charged, tried and convicted for murder of one Sanyu Provia. They were each sentenced to twenty five years imprisonment. They appealed against sentence only.

30 This judgment is, therefore, concerned with sentence only. We find it pertinent, however, to summarize the background facts of the case so as to put our judgment in proper perspective. On 22.02.2009 at about 8.00 pm the deceased was in her bar in Kibwera Trading Centre selling local brew "tonto" and local "waragi". A white



Salon Car arrived and parked outside with 4 occupants. One occupant went to the bar, bought "tonto" returned to the car with the same and the car drove away towards Isingiro Town. The same car returned at 9.30 pm. Two of the four occupants got out of the car, entered the bar, bought "tonto" but soon after pulled
5 the deceased outside and assaulted her with a panga.

The deceased made an alarm which was answered by her husband who was sleeping in the adjoining room which served as a bedroom. A daughter of the deceased also answered the alarm. Both found the deceased unconscious lying in a
10 pool of blood with deep cut wounds on her head, legs and shoulder. She died on the way to Mbarara Hospital that same night.

The assailants fled in Car Reg. No.UAK 614M. It was later established that the first appellant had hired the vehicle from the owner in Kisizi in Rukungiri District
15 ostensibly to visit his father in law in Isingiro.

He was arrested. He made a charge and caution statement to police and admitted participating in the murder of the deceased. He also implicated the others. He explained that the plan to kill the deceased was initiated by his brother in law
20 Arinaitwe apparently because he believed the deceased bewitched the wife of Arinaitwe and other members of the family. The second appellant accompanied them and participated in the killing of the deceased. The trial court found the appellants guilty of murder, convicted and sentenced each one of them to twenty
25 five years.

The appellants, according to the Memorandum of Appeal, raised one ground of appeal which is that:-

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“The sentence of 25 years imprisonment passed by the trial judge on each of the appellants was harsh in the circumstances of the case considering the appellants ages at the time of their sentencing and other
5 mitigating factors.”

Legal representation

10 At the hearing of the appeal the appellants were represented by learned counsel, Mr. Mark Bwengye. The respondent was represented by Ms Gladys Nyanzi, a Principal State Attorney.

Submissions of counsel for the appellant

15 Counsel for the appellants submitted that the sentence of 25 years imposed on each of the appellants was too harsh. According to counsel the first appellant is 36 years old. He is a young man who is capable of reforming. If he served 25 years imprisonment he would get out as an old man at 61 years. Frank Tumwesigye is
20 30 years and if he served 25 years he would get out of prison at 55 years. Counsel further submitted that the appellants have children to look after who are small and are innocent.

The children would suffer when the appellants are serving long sentences.

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The first appellant also has old parents also to look after. The father is 80 and the mother is 73 years old. This called for shorter period of imprisonment of the first appellant so that he is out of prison to look after his aged parents.

5 Both appellants, according to counsel, are first offenders and are repentant. Counsel therefore prayed to this Court to reduce the imprisonment of each appellant to 18 years.

10 **Submissions for the respondent**

Ms Gladys Nyanzi, Principal State Attorney, for the respondent opposed the appeal. She supported both the conviction and sentence. She submitted that the sentence of 25 years for each of the appellants was appropriate and this Court
15 should not interfere with such sentence because the same was legal. The trial judge had properly exercised his discretion and the sentence he imposed was not manifestly excessive or too low to amount to a miscarriage of justice.

The trial judge had considered the fact that the appellants were first offenders and
20 had also considered the period spent on remand. The trial judge had also considered the deadly weapon, a panga, that the appellants had used as well as the fact that the murder had been well planned before its execution and the fact that the deceased had been subjected to cuts over delicate parts of her body.

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Court's decision

We shall proceed to consider whether this is an appropriate case for this Court to interfere with the sentence imposed by the learned trial judge.

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The principles upon which an appellate Court should interfere with a sentence imposed by the trial Court were considered by the Supreme Court in the case of Kyalimpa Edward versus Uganda, Criminal Appeal No.10 of 1995. The Supreme Court referred to R vs. De Haviland (1983) 5 Cr. App. R(s) 109 and held as follows at page 114:-

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“An appropriate sentence is a matter for the discretion of the sentencing judge. Each case presents its own facts upon which a judge exercises his discretion. It is the practice 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 court is satisfied that the sentence imposed by the trial judge was manifestly so excessive as to amount to an injustice: Ogalo s/o Owoura vs. R.(1954) 21 E.A.C.A.270 and R.V Mohamedali Jamal (1948) 15 E.A.C.A 126.”

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20 The maximum sentence for murder for which the appellants were convicted is death. The trial judge in the instant case, in exercise of his discretion, sentenced the appellants to 25 years imprisonment.

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The trial judge took into account the period the applicants spent on remand as well as both the mitigating and the aggravating factors. We find that the sentence imposed upon each appellant is legal and cannot be said to be harsh or manifestly



~~excessive or~~ based on a wrong principle. Therefore we do not find a convincing reason to interfere with the sentence.

We find no merit in the appeal and accordingly dismiss it.

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We confirm the conviction and the sentence imposed by the trial Court upon each one of the appellants.

Dated this day 24th of June 2015.

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Hon. Justice Remy Kasule

JUSTICE OF APPEAL

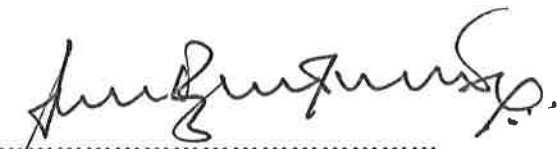
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Hon. Justice Richard Buteera

JUSTICE OF APPEAL

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Hon. Justice F.M.S. Egonda Ntende, JA

JUSTICE OF APPEAL