THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT MBARARA

CRIMINAL APPEAL NO.151 OF 2013

[Appeal from the Judgment of His Lordship Joseph Murangira, in High Court at Rukungiri Criminal Session Case No. 014 of 2011 dated 24th, October, 2013]

[CORAM: ELIZABETH MUSOKE, STEPHEN MUSOTA, JJA, REMMY KASULE, Ag. JA]

BETWEEN

MWERINDE LAUBEN:: APPELLANT

VERSUS

UGANDA:: RESPONDENT

JUDGMENT OF THE COURT

This appeal against sentence only arises from the judgment dated 24th October, 2013, in High Court, Rukungiri Criminal Session Case No.014 of 2011, wherein the appellant pleaded guilty to the offence of murder contrary to Section 188 and 189 of the Penal Code Act, was convicted and sentenced to 35 years imprisonment.

The appellant pursuant to ***Section 132 1(b) of the Trial on Indictments Act*** and ***Rule 43 (3) (a) of the Rules of this Court*** prayed for leave of court to appeal against sentence only. The

respondent's counsel did not oppose the application. Leave was accordingly granted to the appellant by this Court.

The facts of the case, as accepted by the trial Judge, were that on the 26th of June, 2011 at about 1:00pm at Kyamurari village, Kigaga Parish, Nyakagyeme in Rukungiriri District, the appellant found the deceased one Kabongoya Kellen who was his aunt, at the home of Kanonikakye Loy, a sister to the deceased. One Mbabazi Constance, a daughter in law to Kanonikaye Loy, was also present.

The appellant, entered the kitchen where the three stated women were cooking food. He was holding a big stick. He asked the deceased why she was still around yet he [appellant] had ordered her to leave the village.

Before the deceased could respond, the appellant grabbed her and squeezed her against the wall using a big stick which he placed on her neck. The deceased struggled and ran out of the kitchen. The accused followed her outside and hit her with the big stick and the deceased fell down and died instantly.

The appellant was subsequently arrested and charged of Murder. On the 4th of October 2013, the appellant pleaded guilty to the offence of murder and was convicted on his own plea of guilt. On 24th of October 2013, he was sentenced to 35 years imprisonment. Being dissatisfied with the sentence imposed, he lodged an appeal against sentence only on the single ground that:

1. **The learned trial judge erred in both law and fact by imposing a sentence of 35 years imprisonment on the**

appellant which sentence was harsh and excessive in the circumstances of the case.

At the hearing of this appeal, the appellant was represented by learned counsel Bruno Muhanguzi on state brief, while the learned Assistant Director of Public Prosecution Vicky Nabisenke was for the respondent.

With permission of this Court, both counsel for the respective parties filed written submissions.

Due to the Government Health Regulations obtaining at the material time, restricting movement and meeting of persons so as to prevent the spread of Covid 19 virus, the appellant was not physically in Court during the hearing of the Appeal. He attended and participated in the Court of Appeal proceedings through video conferencing and communications technology that the Court applied while he remained physically in Mbarara Government Prison Premises.

Submissions for the Appellant:

Appellant's counsel invited this Court under **Rule 30** of the **Rules of this Court** to reappraise the evidence and draw its own inferences of fact and come up with its own independent decision as regards the legality and appropriateness of the sentence of 35 year imposed upon the appellant. He referred court to the case of **Ogalo S/O Owoura v R (1954) 21 EACA 270,** where it was held that;

"An appellate court will not interfere with a sentence imposed by the High court in the exercise of its original jurisdiction on

the mere ground that the members of court might have passed somewhat a different sentence, if they tried the appellant. The court will only interfere where it is established that the trial judge acted upon a wrong principle or principles. Secondly, the court will interfere where the trial judge overlooked some material factors or factor. Thirdly, the court will interfere with the sentence imposed where it finds that it is manifestly excessive in view of the circumstances of the case or so low to amount to miscarriage of justice".

Counsel contended that the sentence of 35 years imprisonment passed upon the appellant was excessive and amounted to a miscarriage of Justice. He prayed this Court to re-appraise both the mitigating and aggravating factors in arriving at its own independent decision as to the appropriate sentence.

Counsel referred Court to the case of **Godi Akbar Vs Uganda: Criminal Appeal No. 03 of 2013,** where the Supreme Court confirmed a 25 years imprisonment sentence. The appellant had killed his wife.

Counsel also invited this Court to consider the case of **Oyita Sam Vs Uganda; Court of Appeal Criminal Appeal No. 307 of 2010,** where the appellant pleaded guilty to having murdered his own brother over land wrangles and was convicted on his own plea of guilty and sentenced to death by the trial judge. On appeal this Court substituted the death sentence with the sentence of imprisonment for 25 years.

Learned counsel also cited Court of Appeal decision of **Emeju Juventine Vs Uganda, Court of Appeal Criminal Appeal No. 095**

of 2014, where the appellant was convicted of murder on his own plea of guilty. He had murdered his wife with an axe. The sentence of 23 years imprisonment imposed on him was reduced to 18 years after deducting the 2 years he had spent on remand.

Counsel for the Appellant also referred Court to the case of **Nkurunziza Julius Vs Uganda, Court of Appeal Criminal Appeal No. 12 of 2009**, where the appellant had been convicted on his own plea of guilty and sentenced to 17 years imprisonment, the Court observed that a plea of guilty is normally a mitigating factor.

Counsel for the appellant contended that the above cited cases were comparable to the instant appeal and in all of them the sentences imposed were lower than 35 years imprisonment. Learned counsel therefore invited this Court, having considered the above cited decisions, to find that the sentence of 35 years imprisonment imposed upon the appellant to be too harsh and excessive. Counsel urged this Court to set aside the same and substitute it with an appropriate sentence.

Submissions for the Respondent:

Learned Counsel for the respondent opposed the appeal and supported the sentence of 35 years imprisonment imposed by the trial judge upon the appellant as being appropriate in the circumstances of the case.

Counsel relied on the case of **Kiwalabye Vs Uganda: Supreme Court Criminal Appeal No. 143 of 2001**, where court held that the appellate Court is not to interfere with the sentence imposed by a trial Court which has properly exercised its discretion in imposing a sentence. The appellate Court may only interfere where

the exercise of discretion by the sentencing Court 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 circumstance, which as a matter of principle ought to be considered.

Counsel contended that the learned trial judge properly exercised his discretion in imposing a sentence of 35 years imprisonment upon the appellant after he had comprehensively considered both the mitigating and aggravating factors.

Counsel for the respondent further contended that the appellant had not proved any circumstances justifying this Court to interfere with the sentence imposed by the trial Court. She invited this court to consider the **Constitution (Sentencing Guidelines for the Courts of Judicature) (Practice) Directions, 2013**, that set out the starting point for the offence of murder being 35 years imprisonment and the sentencing range being between 30 years imprisonment to death.

Counsel invited this court to consider the sentencing in the case of **Kaddu Kavulu Lawrence Vs Uganda; Supreme Court Criminal Appeal No.72 of 2018;** where the Court of Appeal substituted the death penalty with life imprisonment, which was subsequently upheld by the Supreme Court.

Counsel also cited to Court the case of **Kaija Stephen Vs Uganda; Supreme Court Criminal Appeal No.59 of 2016,** where the Supreme Court upheld the sentence of 35 years imprisonment imposed by the trial court to the appellant convicted of murder.

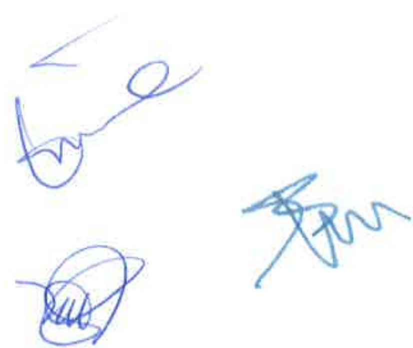
Learned counsel therefore prayed to this Court to uphold the sentence of 35 years imprisonment as an appropriate sentence for the appellant and dismiss the appeal.

RESOLUTION BY COURT:

This Court has noted the submissions of both counsel and has also carefully considered the proceedings of the trial Court. Being the first appellate court, the duty of this Court is to review and re-evaluate the evidence adduced before the trial court, by subjecting the same to fresh scrutiny; to draw inferences therefrom, and to reach its own conclusion as to the appropriateness or legality of the sentence passed upon the appellant. See: **Rule 30(1)(a) of the Judicature (Court of Appeal Rules) Directions SI 13-10, Kifamunte Henry Vs Uganda; Supreme Court Criminal Appeal No. 10 of 1997 and Areet Sam Vs Uganda; Supreme Court Criminal Appeal No. 20 of 2005.**

In the instant case, the trial Judge considered the aggravating and mitigating factors. The aggravating factors were that the appellant killed his aunt in cold blood and the crime of murder was on the arise and thus needed to be curbed. The appellant killed the deceased without being provoked in any way. The deceased was aged 60 years thus an old person who could not put up a fight. The killing was brutal and carried out in broad day light.

As to the mitigating factors, the appellant was taken to be a first offender, he pleaded guilty to the offence, thus not wasting the court's time. He was remorseful and took himself to police immediately after committing the offence. He was aged 49 years



and as such he still had time to reform into a better person. He had spent 2 years and 3 months on remand.

We have also considered the principle of uniformity and consistency in sentencing set out in **Mbunya Godfrey v Uganda; Supreme Court Criminal Appeal No. 4 of 2011,** to the effect that, while no two crimes are identical in all respects, Courts of law should, as much as circumstances permit have consistency and uniformity in sentencing so that cases having similar facts attract similar and/or uniform sentences for those convicted of those cases.

The Supreme Court upheld a sentence of 25 years imprisonment for murder in **Godi Akbar Vs Uganda, (Supra).**

In the case of **Oyita Sam Vs Uganda; Court of Appeal Criminal Appeal No. 307 of 2010,** the appellant pleaded guilty to having murdered his own brother over land wrangles and was convicted on his own plea of guilty and sentenced to death by the trial judge. On Appeal, the Court substituted a death sentence with imprisonment for 25 years imprisonment.

In **Kyaterekera George William v Uganda; Court of Appeal Criminal Appeal No. 113 of 2010,** this court confirmed the sentence of 30 years in imprisonment, imposed by the trial court, upon the appellant convicted of murder by fatally stabbing his victim in the chest.

Similarly, in **Kisitu Majaidin alias Mpata v Uganda; Court of Appeal Criminal Appeal No.28 of 2007**; the Court of Appeal upheld a sentenced of 30 years imprisonment imposed by the trial

court upon an appellant who had been convicted of murdering his mother.

In **Bwefugye Patrick and Namumpa Patrick v Uganda; Court of Appeal Criminal Appeal No. 268 of 2010,** the Court of Appeal set aside a sentence of life imprisonment for murder and substituted the same with 30 years' imprisonment.

The Court of Appeal in **Kijungu Emmanuel v Uganda; Court of Appeal Criminal Appeal No.625 of 2014,** confirmed a sentence of 30 years imprisonment upon an appellant convicted of murder.

Having subjected all the circumstances as regards the sentencing of the appellant carried out by the trial Judge, to fresh scrutiny and having considered the sentences passed in cases with facts having resemblance to the one of the appellant, we find that the sentence of 35 years imprisonment imposed upon the appellant by the trial court was harsh and excessive. We accordingly set it aside. We substitute the same with a sentence of 30 years imprisonment.

The appellant spent 2 years and 3 months on remand. This remand period is taken off the sentence of 30 years imprisonment.

Accordingly, the appellant is to serve a sentence of 27 years and 9 months imprisonment and the same is to be served from the date of his conviction which is 24th October, 2013.

In Conclusion, this appeal is allowed. The Sentence of 35 years imprisonment is set aside. It is substituted by the sentence of 27 years and 9 months imprisonment to be served on the terms set out above

It is so order.

Dated at Mbarara this 13th day of October 2020.

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HON. LADY JUSTICE ELIZABETH MUSOKE, JA.

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HON. MR. JUSTICE STEPHEN MUSOTA, JA.

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HON. MR. JUSTICE REMMY KASULE, Ag. JA.