

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CRIMINAL APPEALS NOS. 39 & 129 OF 2020

1. MAZUKU JONATHAN
2. MPAMULUNGI JUSTINE.....APPELLANT

VERSUS

UGANDARESPONDENT

(Appeal from the conviction and sentence of the High Court of Uganda at Nakawa before Hon. Mr. Oyuko Anthony Ojok dated 3rd February 2020)

CORAM: HON. JUSTICE RICHARD BUTEERA, DCJ
HON. JUSTICE CHRISTOPHER GASHIRABAKE, JA
HON. JUSTICE OSCAR KIHKA, JA

JUDGMENT OF COURT

The Appellants were indicted and convicted of the offence of Murder contrary to sections 188 and 189 of the Penal Code Act and sentenced to 25 years' imprisonment.

The Appellants were dissatisfied with the decision of the trial court and filed this appeal against both conviction and sentence on the following grounds;

1. That the Learned Trial Judge erred in law and fact when he convicted the Appellants based on uncorroborated circumstantial / canine evidence.
2. That the Learned Trial Judge erred in law and fact when he misconstrued the findings of the expert in regard to the samples of soil picked from the Appellants.

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3. The Learned Trial Judge erred in law and fact when he failed to take into account principles governing admission of canine evidence.
4. That the Learned Trial Judge erred in law and fact when he convicted the second Appellant for not testifying against the first Appellant.
5. The Learned Trial Judge erred in law and fact when he disregarded the Appellants' defence of alibi.
6. The Learned Trial Judge erred in law and fact when he sentenced the Appellants to 25 years' imprisonment, a sentence that is harsh and excessive in the circumstances of the case by not taking into account all the mitigating factors.

Background

The facts as accepted in evidence at the trial are as follows;

On 16th August 2017 at about 6:00am a one Nakasi rang Kazibwe Charles, the defence secretary LC1 of St. Francis zone, Kawempe Division and informed him that a dead body had been found dumped at a rubbish heap. Kazibwe then informed the O/C-Bwaise Police Post and thereafter rushed to the scene. Shortly after, the O/C-Station Kawempe Police Division ASP Aanyu Agnes, Detective Corporal Asindua the SOCO (scene of crime officer) together with other Police Officers and a Police sniffer dog arrived at the scene. The sniffer dog was given access to the crime scene whereupon it commenced tracking of the scents which led to Katogo zone. It then entered the house of the 1st and 2nd Appellants who were both inside the room and sat next to the 1st Appellant who was seated in a chair. Both Appellants were arrested and taken to Kawempe Police Station. The deceased was taken to Mulago Hospital mortuary for post mortem.

An autopsy was carried out on the deceased's body which revealed the cause of death as manual strangulation. On 16th August 2017, the scene of crime was visited and a sketch plan drawn. The following day a search was conducted in the Appellants' home in their presence. Exhibits were recovered including a faded black grey skirt with soil stains, a pair of closed shoes stained with soil, a pair

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Standby