

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

CRIMINAL SESSION CASE NO. 22 OF 2012

*(ARISING FROM SUPREME COURT CRIMINAL APPEAL NO. 23 OF 2006 AND
MBARARA CRIMINAL SESSION CASE NO. 127 OF 2000)*

UGANDA.....PROSECUTION

VERSUS

AHIMBISIBWE WILBROAD.....ACCUSED

BEFORE: HON. MR. JUSTICE A. RUGADYA ATWOKI

Proceedings:

24/2/2012

Florence Akello SSA

Court present

Mark Bwengye on State Brief

SSA: matter for mitigation

Ready to proceed

This was a murder case. Accused was sentenced to suffer death. Deceased met death on 31/7/1999. Deceased was cut with a panga. He ran away, but accused followed him and completed his mission. Accused cut the deceased

in the arm, joints and legs. Deceased died upon severe open injuries and severe bleeding. He was killed in a brutal manner, using a lethal weapon – a panga. From the manner in which deceased met his death, this was cold blood and the only befitting sentence is the death penalty. This is our submission. In event of court finding it fit to reduce the sentence, may custodial sentence of 50 years be imposed. Accused killed his own brother and he deserves being kept away from the community. From the record, there is no previous criminal record. So he would be treated as a first offender.

Accused was sentenced on 9/7/2002. So he has been in prison since conviction for close to 10 years. Prior to this he committed offence on 31/7/1999. That means he was on remand prior to his conviction for 3 years.

Bwengye: Accused was tried and convicted. The Court of Appeal confirmed the conviction and sentence. I concede the manner in which the offence was committed was brutal and inhuman. This court has the discretion now to reduce the sentence.

Convict was 1st offender. Prior to conviction, he had spent 2 years and 11 months on remand. So far he has served a sentence for 9 years and 7 months

and 12 days. Together he has been detained for 12 years, 6 months and 12 days.

I visited accused in prison for this hearing. He informed me that at time of trial he was 32 years and now he is 42 years, he was a resident of Kaboka – Mbarara Municipality and was a driver in UHT. He was then married with one child. The wife has since gone away with the child. He had a father now 65 years. It is regrettable that he committed the offence. He appears remorseful. His stay in prison has molded him. If he is given a term to serve he would easily reform. He was in Primary 5 when he entered prison. Currently he holds a UCE and a Certificate in Bible Studies and a Diploma in Christian Theology from Kampala Pentecostal Institute. So he could reform and be a useful member of society. He could have life sentence but could be given a custodial sentence, after considering the mitigation factors, not exceeding 20 years, but not 50 years, which would make him spend all his life in jail. I pray that the sentence should not exceed 20 years. I so pray.

A Rugadya Atwoki

Judge

24/2/2012

COURT SENTENCE:

The accused was convicted of murder in 2002 and sentenced to death. That was the only, and then mandatory sentence. Since then, accused has been in prison. He committed what the trial court called a brutal and inhuman act. He cut his brother, to use the words of the trial Judge like a goat for slaughter. The matter went to the Court of Appeal, which upheld both conviction and sentence. The Supreme Court directed that the High Court takes mitigation proceedings. The accused was said to be a 1st offender. He was 32 years at the time of the offence. He was married with 1 child and an aged father, though he also threatened to kill that father at the time when the father intervened in the fracas which led to the death of the deceased in this case. The accused has spent close to 3 years on remand prior to his conviction, which period I have duly considered. He told court that he is now reformed person. He has got more education and has attended some certificate courses. He asked for forgiveness. He appeared remorseful

The State asked for a long custodial sentence in the event court is inclined to reduce the death sentence.

Counsel for accused asked for not more than 20 years if court was so inclined. I have considered all the above circumstances, including the period on remand and the period so far spent in prison. I am satisfied that the trial court if it had an alternative might not have given the death sentence, though that is speculative.

I will accordingly suspend the death sentence. I will in its place sentence the accused to imprisonment for 35 years, having taken into account the period he has spent in prison to date. I so order - Sentence is of 35 years imprisonment. This sentence starts to run from today.

A Rugadya Atwoki

Judge

24/2/2012

Court: Accused has a right to appeal against this sentence within 14 days from today to the Court of Appeal.

A Rugadya Atwoki

Judge

24/2/2012