



THE JUDICIARY

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TOPIC: PRINCIPLES AND PURPOSES OF SENTENCING

PAPER PRESENTED BY

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BACKGROUND

At the conclusion of a Criminal trial, the trial Court is required to pass a sentence as authorised by Law. As of now the following sentencing options are open to the judge.

1. Death sentence – as a maximum and not a mandatory sentence.
2. A whole life term that does not attract remission.
3. A life sentence, which according to section 86 (3) of the Prisons Act attracts remission.
4. A definite/determinate sentence with a limitless range of sentence which may range from a few hours to as long as fifty or even more depending on the discretion of the sentencing judge.

This brief presentation will examine the procedure to be followed by the sentencing Court before arriving at an ‘appropriate’ sentence which should ideally be commensurate with the offence. I will also comment on areas which are constant in the appeal against sentences that I feel could be avoided if the trial judges took more care.

(2) PURPOSE OF SENTENCING

The Constitution (Sentencing Guidelines) for Courts of Judicature state the purpose of sentencing as follows:-

1. The purpose of sentencing is to promote respect for the law in order to maintain a just, peaceful and safe society.
2. For the purposes of subparagraph(I), the Court shall in accordance with the sentencing principals pass a sentence aimed at:
 - Denouncing unlawful conduct;
 - Punishing the offender;

- Deferring a person from committing an offence.
- Separating an offender from society where necessary;
- Reforming, rehabilitating and re-integrating an offender into society;
- Providing reparation of harm done to the victim to the community and
- Promoting a sense of responsibility on the part of the offender and acknowledging the harm done to the victim and the community.

There are two broad categories of sentences. There are those that are rehabilitative and those that are purely punitive or deterrent. The decision as to what offender may benefit from a rehabilitative sentence and the one that deserves nothing better than a punitive sentence depends on the judge but whether sentences act as a deterrent is a debate for another day. Similar offences seem to recur all the time.

DUTIES OF THE PROSECUTION AND DEFENCE

For a presiding Judge to come up with a sentence to achieve the above purpose both the prosecution and defence play a big role. The prosecutor sets out the factors relevant to sentence and so does the defence. The Judge, within 7 days passes sentence. The Judge should state in Court which aggravating and mitigating factors he has found to apply. There has also been a suggestion that the prosecution and defence give an indication of the appropriate sentence in their view. The Court may require a victim impact statement or/and a community statement and may require evidence on a wider range of matters to help determine a correct sentence.

(4) DISPARITY IN SENTENCES

It may not be possible to have uniform or similar sentence because the circumstances under which offences are committed differ. Some acts are more

heinous than others. Some are deserving of heavy punishments while others are not. However, it is possible to establish a pattern of sentencing that will make the disparity in sentences less glaring than they are. I will give three examples of cases where there is a such a glaring disparity in sentence that if the Courts followed precedents while sentencing a pattern would be established resulting in less glaring disparities.

1. **Kooky Sharma Vs Uganda (SC. Criminal. Appeal No 44 of 2000)** the appellant had his death sentence confirmed for a conviction for murder of his wife. He was later released on a prerogative of mercy.
2. **Akbar God Vs Uganda (S.C. Criminal Appeal No. 3 of 2013)** an Honourable Member of Parliament was sentenced to 25 years imprisonment for murder of his wife.
3. **Godfrey Mpagi Vs Uganda (S.C. Criminal Appeal No 63 of 2015)** where the appellant was sentenced to 34 years for participating in a case of Thief Beating (Mob Justice)
4. **Kato Kyambadde & Anor Vs Uganda (S.C. Cr. App No 0030 Of 2014) A.1** together with two others killed his brother with whom he had dispute over their late fathers state. He was sentenced to 17 years imprisonment.

The first two arise out of some domestic differences, the third is a case of thief beating while the fourth is both domestic and land related. The fourth stands out as more lenient than the rest and it is difficult to appreciate why and that is the point about having precedents which may not necessarily be binding but can be used as a guide.

(5) MULTIPLE SENTENCES

In the case of **Magala Ramathan Vs Uganda (S.C. Cr. App No. 01 of 2014)** one of the complaints against his sentence was that he was ordered to serve

consecutive instead of concurrent sentence which according to him is the prevailing practice. It was found by both the Court of Appeal and Supreme Court that according to section 2(2) of the T.I.A. the rule is for the High Court to executive sentence and directing sentences to run concurrently is the exception rather than the rule.

In multiple conviction for murder where the trial Judge is passing a death penalty, a death sentence is passed on all.

(6) ILLEGAL SENTENCES

(a) Non-compliance with Article 23(8) of the Constitution which provides that when a person is convicted and sentenced to a term of imprisonment for an offence before the completion of his or her trial shall be taken into account in imposing the term of imprisonment.

The constitution was promulgated in 1995 but to date the appellate Courts still get appeals regarding non-compliance with the Constitution. In some cases it is not that the Court has not taken the provision into account but the vagueness of the pronouncement to the extent that the beneficiary does not understand how the period has been accounted for. The case of **Moses Rwabugande Vs Uganda (S.C. Cr. App. No. 25 of 2014)** and Guideline 15 of the Constitution (Sentencing Guidelines for Courts of Judicature (practice) Directions, 2013 provide for deduction of the period spent on remand. In the case of **Bongani Phillip ViKalazi and the state (Supreme Court of Appeal of South Africa case no. 576/07)** it was put as follows:-

“The appeal against sentence is upheld. The sentence imposed upon the appellant is set aside and the following sentence is substituted:

‘The accused is sentenced to fifteen year imprisonment from which two years are to be deducted when calculating the date upon which the sentence is to expire.’ In this way nobody would complaint that the period spent on remand has not been taken into consideration.

(b) WHOLE LIFE SENTENCE

In the case of **Kisembo Patrick Vs Uganda (Court of Appeal Criminal Appeal No 411 of 2014)** the finding of the Court which was based on the Historical perspective of a Life Sentence is that a life sentence is 20 years according to the Prisons Act. On the other hand there are decisions of the Supreme Court to the effect that the Prisons Act does not define Life Sentence but the 20 years is only for purpose of remission. Before the decision in **Kigula** the question never arose because on a conviction on Capital Offence the sentence was a mandatory death sentence and a whole life sentence or lengthy sentences which are more than twenty years are legal sentences.

In my view the resolution to this impasse is an amendment to the Prisons Act the way Kenya has done it. S. 46 of the Kenyan Prison Act provides as follows:-

“46 REMISSION OF SENTENCE

Convicted Criminal prisoners sentenced to imprisonment, whether by one sentence or consecutive sentences, for a period of exceeding one month, may by industry and good conduct, earn a remission of one-third of their sentence or sentences.

Provided that in ono case shall

(I) any remission granted result in the release of a prisoner until he has served one calendar month;

(II) any remission be granted to a prisoner sentenced to imprisonment for life or for an offence under section 296 (I) of the Penal Code or to be detained during the period. Pleasure”

There are now a number of cases challenging the legality of whole life sentence that should be resolved in a legislative measure will put the argument to rest.

CONCLUSION

I have attached presentations which I made in earlier workshops. I have also attached a matrix of sentence in sexual offence prior to the sentencing guidelines to be compared with a matrix of sentences after the sentencing guidelines that may generate more discussion on the subject of sentencing until we develop a sentencing regime that the community will appreciate.

For now I wish you fruitful deliberations

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