**Zahura v Uganda**

**Division:** Supreme Court of Uganda at Mengo

**Date of judgment:** 18 July 2005

**Case Number:** 16/04

**Before:** Oder, Tsekooko, Karokora, Mulenga and Kanyeihamba JJSC

**Sourced by:** LawAfrica

*[1] Criminal law – Defences – Self-defence – Provocation – Whether appellant’s conviction justified.*

*[2] Criminal procedure – Constitutional law – Sentencing – Mandatory death sentences – Whether mandatory death sentences were constitutional.*

**Editor’s Summary**

The appellant was tried and convicted before the High Court on a charge of murder and subsequently sentenced to death. His appeal to the Court of Appeal was dismissed. He now appealed to the Supreme

Court on the grounds that the justices of appeal had failed to properly consider the principles of

self-defence and provocation and had erred in their consideration of the principle of the dying declaration. In a supplementary ground, he claimed that the Court of Appeal had also erred in not giving him an opportunity to be heard on the question of mitigation of sentence. In this regard, his counsel relied on

*Kigula and others v Attorney-General*(*supra*), where the Constitutional Court had held that it was unconstitutional to make the death penalty mandatory, to argue that the case should be remitted to the

High Court with orders that it hear the appellant in mitigation. Counsel for the respondent argued that the case of *Kigula*(*supra*) was under appeal and urged the court to stay proceedings in all appeals in which the death sentence had been imposed on the basis that it was mandatory.

**Held** – The Court of Appeal had properly applied the law to the facts of the case and arrived at a correct decision.

To accept the submissions of the appellant’s counsel regarding mitigation would be to pre-empt the

Supreme Court’s decision in the pending appeal in *Kigula*(*supra*). In the circumstances, though the

Constitutional Court decision had to be respected, it could not be implemented while the appeal was pending. Confirmation of the sentence would be postponed pending the determination of the appeal against the decision of the Constitutional Court in *Kigula v AG*(*supra*).

Appeal against conviction dismissed, confirmation of sentence deferred.

**Case referred to in judgment**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

*Kigula and others v Attorney-General* Constitutional Petition number 6 of 2003