THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CRIMINAL APPEAL NO. 284 OF 2021

(Arising from the decision of the High Court of Uganda delivered on the 15th of November 2021 by Hon. Lady Justice Lydia Mugambe at Kampala HCT 100-ICD-CR-SL No. 005 of 2015)

UGOCHUKWU JOACHIM ONYEAKO :::::::::::::::::::::::::::::::: APPELLANT

VERSUS

UGANDA :: RESPONDENT

CORAM: HON. MR. JUSTICE RICHARD BUTEERA, DCJ

HON. MR. JUSTICE CHRISTOPHER GASHIRABAKE, JA

HON. MR. JUSTICE OSCAR JOHN KIHIKA, JA

JUDGMENT OF COURT

Introduction

The Appellant was indicted and convicted of the offences of kidnapping with intent to confine a person contrary to section 244 of the Penal Code Act and kidnapping with intent to obtain a ransom contrary to section 243 (l) (c) of the Penal Code Act and sentenced to 17 years' imprisonment.

Background

On 21st July 2013, Mr. Ross Robert James, the victim, received an email from *veronica.wild@tlem.pl* interesting him in an investment opportunity of assisting a one Ms. Ford relocate her family fortune of US20 million from Zimbabwe to Australia. Several communications followed after the 21st July 2013 email and the victim exchanged telephone contacts with the author of the first email. Other mails were received from one Michael Oweni, the "attorney" of Ms. Luciana Ford

via *micheal.oweni@live.com*. After numerous communications, Micheal Oweni, invited the victim to Uganda to seal the deal with Ms. Luciana Ford because Zimbabwe was not safe. The victim made arrangements to travel to Uganda and was assured by the said Attorney that arrangements had been made for his pick-up from Entebbe airport to the Sheraton hotel Kampala where the two would briefly meet before meeting with Ms. Luciana Ford, the would be partner. The victim was also informed that reservation for accommodation had been made at the Sheraton Hotel. On 27/08/2013, the victim flew from Kevi Ukraine to Dubai where he connected to Entebbe International Airport Uganda and arrived on 28/08/13.

On arrival at Entebbe Airport, the victim was received by Onyedeke David, who was holding a placard with his name 'Ross Robert James' in bold ink. He warmly received the victim, ushered him to a car and informed him that the person in the car was Michael's driver. The victim believed Onyedeke David was talking about Michael Oweni, the attorney. After 20 to 25 minutes' drive, the car turned off the main road and the victim who was a bit alarmed asked where they were heading to. Onyedeke David replied that they were going to see 'Michael'. The victim protested and insisted that he be taken to Sheraton hotel where he would comfortably meet Michael but all his protests were ignored.

The car parked in a homestead in Seguku and the victim was ordered out and ushered into the house with his luggage. ln the house, Onyedeke David and the victim were met by the Appellant, Onyaeko Ugochukwu Joachim, and Iyke Sam who commanded the victim to sit down and forget about going to the Sheraton Hotel to meet Michael. Realizing that he was in danger, the victim complied. A file folder was presented before the victim by one Obiora Sunday and on opening it, read that he was held as a hostage and would continue to be held unless his people released 650,000 Euros which had to be transported to Uganda by courier and packed in their luggage. The folder contained photographs of a female aged between 40 to 50 years old, a European who seemed to have been tortured. He was told that was Luciana Ford, the lady from Zimbabwe. Having ensured that

the victim had read through and internalized all the contents of the folder, A3 searched the victim for any electronic devises as well as any valuables.

Subsequently, the victim was ordered to note down a list persons and their telephone contacts that he could contact to raise the ransom. He was however cautioned not to let anyone know that he was held hostage but to call and ask for the money under the guise of requiring it for business. After making several calls to relatives and friends with no positive response with regard to raising the 650,000 Euro ransom, the hostage takers reduced the ransom to 10,000 Euros. The 10,000 Euros was raised by the victim's family and friends in Australia. The hostage takers, through email and telephone messages sent details of how to remit the money. The remission was to go through western Union and one Sekiziyivu Paul alias Protocol who was coordinating the Ugandans that were to receive the ransom money through Ugandan Western Union. Among the recipients of this ransom was Ndugga Kalist Sempala. The victim was released after the remission of the money through Western Union. He was dropped at Entebbe Airport where he was found in a state of confusion by officers of the Uganda police.

The Uganda Police had been notified by the Australian Embassy about the developments and they were purposely at Entebbe International Airport looking out for the victim. The victim led the police to the Seguku house where he had been held hostage though no entry into the house was made at that stage. Throughout his stay in the Seguku house, the victim was guarded by the Appellant and A4 Iyke Sam Agaordi Madu. On 13/08/2013, police received a complaint from the American Embassy that an American citizen called Robert Braumuller had been kidnapped and the kidnappers were demanding for a ransom of $50,000 (fifty thousand US dollars). Suspecting that the kidnappers could be the ones who had taken the victim hostage, police raided the Seguku home and indeed found the American being guarded by Iyke Sam Agaordi Madu.

Iyke Sam Agaordi Madu was arrested and led to the arrest of David Onyekede, Obiora Sunday, Onyaeko Ugochukwu Joachim and Ndugga Kalist Sempala. They later led to the arrest of Sekiziyivu Paul alias Protocol who was recruited to receive the ransom money. Investigations revealed that these accused persons, together with the Appellant were the same people who had taken the victims, Ross Robert James and Robert Braumuller hostage. The accused were accordingly charged with the offence of kidnapping with intent to confine person contrary to section 244 of the Penal Code Act and kidnapping with intent to obtain a ransom contrary to section 243 (l) (c) of the Penal Code Act. A2, A3 and A4 pleaded guilty to the offences charged and were sentenced accordingly. The Appellant tried to enter a plea bargain which failed hence went to full trial. The Appellant was found guilty of the offences charged and sentenced to 17 years' imprisonment.

Being dissatisfied with the decision of the trial court, the Appellant filed an appeal to this court on the following grounds;

1. That the learned trial Judge erred in law and fact when she conducted the trial with irregularities with regard to assessors.
2. That the learned trial Judge erred in law and fact when she did not follow the rules governing plea bargain by a judicial officer.
3. That the learned trial Judge erred in law and fact when she convicted the appellant basing on insufficient and uncorroborated co-accused testimonies.
4. That the leaned trial Judge erred in law and fact when she meted out an illegal sentence onto the appellant, which is manifestly harsh and excessive given the obtaining circumstances.

Representation

When the appeal came up for hearing, Ms. Wakabala Sylvia appeared for the Appellant while Mr. Richard Birivumbuka, Chief State Attorney, appeared for the Respondent.

Duty of a first Appellate Court

We recall that this is a first appellate court and as such, the law enjoins it to review and re-evaluate the evidence as a whole, closely scrutinize it, draw its own inferences, and come to its conclusion on the matter. This duty is laid down in **Rule 30(1) (a)** of the Rules of this Court, thus;

> *30. Power to reappraise evidence and to take additional evidence.*
>
> *(1) On any appeal from a decision of the High Court acting in the exercise of its original jurisdiction, the court may—*
>
> *(a) reappraise the evidence and draw inferences of fact; and*
>
> *(b) in its discretion, for sufficient reason, take additional evidence or direct that additional evidence be taken by the trial court or by a commissioner.*

The cases of **Pandya v R [1957] EA 336** and **Kifamunte Henry v Uganda SCCA No. 10 of 1997** have also succinctly re-stated this duty. We have borne these principles in mind in resolving this appeal.

Ground one

Appellant's submissions

Counsel submitted that the trial began with two assessors and as it proceeded, one assessor did not attend court on some dates. Counsel argued that in case an assessor is absent during trial, the trial should proceed with the remaining assessor. Counsel relied on the decision in **Okoa Jimmy alias Baby & 4 ors Vs Uganda C.A.C.A No. 55, 68 and 67 of 2016** for the proposition that allowing the assessor to resume participation in the trial is a fundamental irregularity which occasions a miscarriage of justice. Counsel relied on **Section 67** of the **Trial on Indictments Act** which provides for oath of assessors and argued that a trial that proceeds without assessors taking oath is a nullity. **Respondent's submissions**

In reply, counsel submitted that the assessors were appointed on 02/02/2015 and their particulars were duly recorded. That whereas the record does not reflect that the assessors were sworn in, it was merely an omission on the record as the judge would not have taken the particulars and omitted the oath. Counsel argued that the 2nd assessor did not attend court on 2/11/2015 but eventually, the Judge did away with her and remained with one assessor in accordance with Section 69 (1) of the Trial on Indictments Act. Counsel submitted that the trial Judge was alive to the role of assessors during a trial and thus, no miscarriage was occasioned to the Appellant.

Consideration of ground 1

The Appellant's counsel faults the learned trial Judge for having conducted the trial in the absence of one of the assessors on certain days. **Section 3** of the **Trial on Indictments Act** underscores the importance of assessors and provides a mandatory requirement that all criminal trials in the High Court be conducted with at least two assessors. It is without doubt that assessors' participation in a criminal trial is crucial.

Section 67 of the **Trial on Indictments Act** provides for oath taking of assessors and provides as follows;

> ***"67. Oath of assessor.***
>
> ***At the commencement of the trial and, where the provisions of section 66 are applicable, after the preliminary hearing has been concluded, each assessor shall take an oath of impartially to advise the court to the best of his or her knowledge, skill and ability on the issues pending before the court."***

The appointment of assessors is to be found at Pages 23 to 24 of the Record and it states as follows;

> ***"Court****: I am proposing the following as Assessors:*

1. Mr. John Kimera

2. Hajjati Mariam Sengooba.

Assessor No.1 Kimera John, aged 3O years, Businessman at Kabojja, resides at Kabojja, Nsangi Sub-county, Wakiso, Diploma and Degree in Development Studies Mutesa I university and Nsamizi Training Institute.

Assessor No.2: Hajjati Mariam Sengooba, 55 y CS at Namungoona LC.I, Kyadondo, Senior six.

Court: Do you have any objection?

***Accused 1**: No objection.*

***Accused 2**: No objection.*

***Accused 3**: No objection.*

***Ms. Kagezi**: No objection.*

Defence Counsel:

1. No objection.

2. No objection.

Court: *The above mentioned persons will be the Assessors in this matter.*

***Ms. Kagezi:** We don't have any agreed facts. I will be calling twelve witnesses. Four of them are outside Uganda i.e. two are in New York and two in Australia. We pray to this court to proceed by video conferencing in respect of the four witnesses."*

The record does not reflect that the assessors were sworn in. The respondent's counsel however argues that this was an omission in the recording of the proceedings for reasons that the trial Judge could not have recorded the

assessor's particulars and subjected them to the defenses' objection and forget to take oath.

We are inclined to agree with the submissions of counsel for the respondent. Having taken all the particulars of the assessors, we are of the view that the taking of oath by the assessors was merely an omission on the record. Even if the trial Judge had overlooked the procedure requiring the assessors to take oath, we think that this is not enough to set aside the judgment. We are fortified in our view by Section 139 of the Trial on Indictments Act which provides as follows;

"139. Reversability or alteration of finding, sentence or order by reason of error, etc.

1. Subject to the provisions of any written law, no finding, sentence or order passed by the High Court shall be reversed or altered on appeal on account of any error, omission, irregularity or misdirection in the summons, warrant, indictment, order, judgment or other proceedings before or during the trial unless the error, omission, irregularity or misdirection has, in fact, occasioned a failure of justice.

2. In determining whether any error, omission, irregularity or misdirection has occasioned a failure of justice, the court shall have regard to the question whether the objection could and should have been raised at an earlier stage in the proceedings."

Section 139 of the Trial on Indictments Act, essentially states that for an Appellate Court to reverse or set aside a judgment on account of some omission during the proceedings at the High Court, such omission ought to have resulted in a failure of justice. We are of the view that the Appellant has not made out a case for a failure of justice resulting from failure of the trial Judge to administer oath of the assessors.

We are alive to the principles governing assessors in criminal trials. We are also alive to the importance of administering substantive justice without undue regard to technicalities. This principle was considered by the Supreme Court in **Uganda Vs Guster Nsubuga and Robinhood Byamukama, S.C.C.A No. 92 of 2018** in which the Court of Appeal had quashed the conviction and sentence of the respondents on grounds that the trial Judge erred in convicting the respondents on an amended indictment which they never took plea to. Their Lordships held as follows;

> ***"This is one of the cases where substantive justice requires that the anomaly pointed out in the process of plea taking be overlooked in favor of wider cause of substantive justice....***
>
> ***However, it would be expecting too much to demand that all the trials must run like clockwork, short of which they would result in nullification of the entire trial. We do not live in a perfect world so we have to evaluate the impact of any particular imperfection on the entire trial."***

Thus, omission from the typed proceedings of the assessors taking oath is not ground to nullify the entire trial. In any case, if indeed the assessors did not take oath, this anomaly ought to have been raised at the earliest opportunity by the Appellant as is provided by Section 139 (2) of the Trial on Indictments Act. The Appellant ought to have raised this objection at the trial.

The Appellant's counsel also argues that one of the assessors did not attend court on certain dates during the hearing. That on 18/8/2015 at page 110 of the record, the trial Judge recorded only one assessor in the afternoon session. The morning session however indicated both assessors as present and this, according to the respondent's counsel, was a typing error since both assessors were present on that day.

From the evidence on the record, the second assessor, Hajjati Mariam Sengooba, missed court proceedings on a number of occasions and thus, the learned trial

Judge did away with her in accordance with Section 69(1) of the Trial on Indictments Act. The trial Judge remained with only one assessor and he is the only one that gave an opinion to court.

We therefore find no reason to fault the learned trial Judge for having proceeded with one assessor, after considering that the second one missed a number of court proceedings. Ground one accordingly fails.

Ground 2

Appellant's submissions

Counsel submitted that the Rules governing plea bargain were flawed to the detriment of the appellant. Under Rule 8 sub rule 3 of the Plea Bargain Rules, a judicial officer who participated in a failed plea bargain may not preside over a trial of the same accused person. That the plea bargain proceedings should not form part of the trial record as it prejudices the appellant in that the judicial officer will be easily biased.

Respondent's submissions

In reply, counsel submitted that there were no plea bargain negotiations in court and that the day the appellant's counsel informed court of the possible plea bargain, the appellant was not in court and the details of the plea bargain were never placed before court. Counsel submitted that plea bargain is not initiated by informing court, but with an appellant approaching the prosecutor for a possible negotiation. In addition, the record of appeal has no record of the plea bargain and the trial Judge played no role in the failed plea bargain.

Consideration of ground 2

Plea bargain is governed by the **Judicature (Plea Bargain) Rules, 2016** and **Rule 4** defines plea bargain to mean;

> ***"plea bargain" means the process between an accused person and the prosecution, in which the accused person agrees to plead guilty***

in exchange for an agreement by the prosecutor to drop one or more charges, reduce a charge to a less serious offense, or recommend a particular sentence subject to approval by court;"

Rule 8 provides as follows;

"8. Court participation in plea bargain.

(1) The court may participate in plea bargain discussions.

(2) The parties shall inform court of the ongoing plea bargain negotiations and shall consult the court on its recommendations with regard to possible sentence before the agreement is brought to court for approval and recording.

(3) Subject to sub rule (1), a judicial officer who has participated in a failed plea bargain negotiation may not preside over a trial in relation to the same case."

Rule 8 (3) above provides that a judicial officer that participated in a failed plea bargain may not preside over a trial. In the present case however, the plea bargain agreement was never placed before court and as such, it would be erroneous for this court to find that the trial Judge participated in the failed plea bargain. The issue of plea bargain was introduced to court on page 48 to 49 of the record and it states as follows;

"26.3,2015

For State: Racheal Bikhole.

For Defence- Jane Amooti.

Accused was in court house but not brought because of typhoid.

Kagoro Sergeant Upper Prison Luzira.

Court Clerk Olivia Nassuna.

Lega1 Researcher Phillipa Bogere.

***Ms. Amooti**: My Lord the accused person is unwell. He suffers from typhoid and malaria. He is requesting for ample time to recover and proceed with matter. He has still expressed interest in a Plea Bargain Agreement. He requests the Prosecution to delete some facts e.g Arrest information but I intend to file a Motion on 2nd April 2015 on expunging warrant of arrest and paragraph contents on South Africa.*

.....

Assessors: Hajjati Mariam Sengooba and Kimera John present.

Ms. Bikhole: Previously A1 had shown that a plea bargain be struck but it failed. Matter is for hearing. We have two witnesses in court."

From the above excerpt, it is clear that the trial Judge did not take part in the plea bargain and as such, Rule 8(3) of the Judicature (Plea Bargain) Rules, 2016 is inapplicable to this case. We are thus unable to fault the learned trial Judge for participation in the trial process after a failed plea bargain.

Ground 2 accordingly fails.

Ground 3

Appellant's submissions

Counsel submitted that the learned trial Judge believed evidence of the appellant's co-accused persons yet the same was contradictory. That the evidence of PW3, PW4 and PW5 had contradictions especially in regard to how they each met the appellant. Counsel argued that the Appellant did not participate in the alleged crimes and neither did he participate in financing, planning or masterminding the commission of the alleged offences. Counsel relied on the decision in **Wasswa and others Vs Uganda SCCA No. 311 of 1991** regarding the weight attached to contradictions and inconsistencies.

Respondent's submissions.

Counsel submitted that the testimonies of the co-accused PW3, PW4, PW5 and PW14 were sufficient and corroborative enough to warrant the appellant's conviction. That the said co-accused knew the appellant very well and ably placed him at the scene of crime to the same degree they did to themselves. That PW3 testified that he was instructed to rent a house in Seguku by the appellant and also to pick both victims from Entebbe International Airport. Counsel argued that there were no contradictions in the evidence of the appellant's co-accused. Their evidence was cogent and credible and did not require any form of corroboration. Counsel argued the the learned trial Judge warned herself of the dangers of relying on evidence of co-accused persons and relied on other corroborative evidence from PW7 and PW19.

Consideration of ground 3

Ground 3 faults the learned trial Judge for having found that the Appellant participated in the commission of the offences basing on the testimony of his c0-accused.

The learned trial Judge relied on the evidence of PW2 and PW3, the victims of the offences to corroborate the evidence of the co-accused. PW2 identified the appellant as one of the people that kidnapped him and asked for a ransom of 100,000 Euros but later reduced it to 50,000 Euros to be paid through western union. PW19. Robert Ross also testified that he paid a ransom to the appellant which was received through Shumuk Forex Bureau and the transaction was confirmed by PW10, a cashier with Shumuk Forex Bureau.

PW3 gave a detailed statement of how the victims were kidnapped and taken to the house in Seguku which had been rented by the appellant. The testimony of PW3 was that even the car that was used to pick the victims and take them to Seguku was rented by the appellant.

PW19, Ross James, testified that the appellant was in the company of others that confined him at the Seguku house and asked for a ransom. The victims PW19 and PW2 were being invited by Michael Owen. He was sending emails to the victims as well as their relatives asking for the ransom. The evidence of the victims, PW2 and PW19, was corroborated by that of PW15, Katuzeeyo Boaz, a police officer with Counter Terrorism, who testified that the Appellant was calling himself Michael Owen and according to the investigations, Michael Owen was found to be the Appellant.

PW5, Iyke Sam, was found guarding the victims and he told court that he was doing work for his bosses and among his bosses was the Appellant. PW4, Obiora Sunday was found in possession of Braumuller's items when he was arrested on Entebbe Road, These were a laptop and credit cards. PW4 stated that the Appellant was also his boss and he was going to meet him at the time he was arrested. The evidence of PW2, Robert Braumuller, PW3, PW4, PW5, PW14, PW15, and PW19 was sufficient to prove the offence of kidnap against the appellant.

In addition was also the evidence of the Appellant's co-accused persons who pleaded guilty and gave a detailed series of events that led to the kidnap of the victims. PW3, PW4 and PW5 testified that the Appellant was their boss and that he participated in the commission of the offence and was the overall planner of the whole deal. PW3 led police to the hotel where the Appellant was shortly after the telephone communication between PW3 and the Appellant.

It is therefore our considered view that the Appellant was placed at the scene of crime and we find no reason to fault the finding of the learned trial Judge basing on the evidence she did which we have re-evaluated above.

Ground 4

Appellant's submissions

Counsel submitted that the learned trial Judge did not take into account the period the appellant spent on remand contrary to Article 23(8) of the Constitution. Counsel submitted that the sentence was illegal to that extent and in addition, the mitigating factors were not considered and thus court passed a harsh and excessive sentence.

Respondent's submissions

Counsel submitted that the appellant was sentenced to 17 years on two counts to run concurrently for an offence for which the maximum sentence is 10 years. Counsel conceded that the sentence passed by the trial court is illegal for failure to arithmetically deduct the period spent on remand and prayed that court exercises its powers to re-sentence the appellant.

Consideration of Ground 4

For this Court, as a first appellate court, to interfere with the sentence of a trial Court it must be shown that any one or more of the factors below exist:

1. The sentence is illegal.
2. The sentence is harsh or manifestly excessive.
3. There has been failure to exercise discretion.
4. There was failure to take into account a material factor.
5. An error in principle was made.

See: ***Rwabugande Moses Vs Uganda, Supreme Court Criminal Appeal No. 25 of 2014; Kyalimpa Edward Vs Uganda, Supreme Court Criminal Appeal No. 10 of 1995; Kamya Johnson Wavamuno Vs Uganda, Supreme Court Criminal Appeal No. 16 of 2000;*** and ***Kiwalabye Bernad Vs Uganda, Supreme Court Criminal Appeal No. 143 of 2001.***

Further, the court may not interfere with the sentence imposed by a trial Court simply because it would have imposed a different sentence had it been the trial Court. See: ***Ogalo S/O Owoura Vs Republic [1954] 24 EA CA 270.***

It is the appellant's claim that the sentence is illegal on account of the failure of the trial Judge to arithmetically deduct the remand period in accordance with the Supreme Court decision in **Rwabugande Moses Vs Uganda (op cit)** and **Article 23 (8) of the Constitution of the Republic of Uganda**. The respondent conceded to this ground.

While sentencing the appellant, the trial Judge stated:

> *"The Court has taken into consideration both the submissions of the State and Allocutus of the Convict in the mitigation of their sentence, more so that the Convict is first time offender and there is no evidence of the antecedents of the Convict in Nairobi Kenya, Canada and South Africa as alleged by Prosecution. I make no Directive to Orders to refund of money at the Convict's Bank Account with Eco Bank; I make Order to refund of Suspect's property as outlined and prayed for in the Final Defense's Written Submissions. Convict shall serve 17 years in prison on all Counts concurrently, and Period on Remand to be considered. The Convict shall be deported after serving Sentence. I so Order."*

Article 23 (8) of the **Constitution of the Republic of Uganda, 1995** requires the sentencing court to consider the remand period in the following terms:

> *"Where a person is convicted and sentenced to a term of imprisonment for an offence, any period he or she spends in lawful custody in respect of the offence before the completion of his or her trial shall be taken into account in imposing the term of imprisonment."* [Emphasis added]

The above underlined words are, in our view, the operative words when resolving the issue of illegality of sentence raised in the appeal. In the ***Rwabugande case***,

the expression "*take into account*" the remand period was interpreted by the Supreme Court to involve arithmetical deduction thus:

> *"It is our view that the taking into account of the period spent on remand by a court is necessarily arithmetical. This is because the period is known with certainty and precision; consideration of the remand period should therefore necessarily mean reducing or subtracting that period from the final sentence. That period spent in lawful custody prior to the trial must be specifically credited to an accused."*

Subsequently the Supreme Court clarified the meaning of the expression "take into account" in the case of **Abelle Asuman Vs Uganda, Supreme Court Criminal Appeal No.66 of 2016** (delivered on 19th April 2018) thus:

> *"What is material in [the Rwabugande] decision is that the period spent in lawful custody prior to the trial and sentencing of a convict must be taken into account and according to the case of* ***Rwabugande*** *that remand period should be credited to a convict when he is sentenced to a term of imprisonment. This Court used the words to deduct and in an arithmetical way as a guide for the sentencing Courts but those metaphors are not derived from the Constitution.*
>
> *Where a sentencing Court has clearly demonstrated that it has taken into account the period spent on remand to the credit of the convict, the sentence would not be interfered with by the appellate Court only because the sentencing Judge or Justices used different words in their judgment or missed to state that they deducted the period spent on remand. These may be issues of style for which a lower Court would not be faulted when in effect the Court has complied with the Constitutional obligation in Article 23(8) of the Constitution." [Emphasis added]*

From the above, it is clear that the guiding question in the resolution of this ground is whether, from the style used by the trial Court, it clearly demonstrated that it has taken into account the period spent by the appellant on remand to

his credit. In our view, the period the appellant spent on remand was not considered in the sentencing order of the learned trial Judge. In the premises, we are satisfied that the trial court did not clearly demonstrate that in sentencing the appellant to the 17 years' imprisonment term, it did take into account the period he spent on remand.

In addition, the Appellant was sentenced to 17 years' imprisonment for an offence which carries a maximum sentence of 10 years' imprisonment. The Appellant was charged and convicted of the offences of kidnapping with intent to confine person contrary to section 244 of the Penal Code Act and kidnapping with intent to obtain a ransom contrary to section 243 (l) (c). The sections provide as follows;

Section **243(1) (c)** of the **Penal Code Act** provides:-

> *"**243. Kidnapping or detaining with intent to murder, etc.***
>
> *(1) Any person who by force or fraud kidnaps, abducts, takes away or detains any person against his or her will—*
>
> *(a) .....*
>
> *(b) .....*
>
> *(c) with intent to procure a ransom or benefit for the liberation of such a person from the danger of being murdered, commits an offence and is liable on conviction to suffer death.*

Section 244 of the **Penal Code Act** provides:-

> ***" 244. Kidnapping or abducting with intent to confine person.***
>
> *Any person who kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined commits a felony and is liable to imprisonment for ten years."*

The maximum sentence, as per section 244 of the Penal Code Act, for the offence of kidnapping or abducting with intent to confine a person for which the Appellant was charged and convicted is 10 years. The learned trial Judge passed a sentence of 17 years which was beyond the maximum sentence stipulated in the section 244 of the Penal Code Act.

We therefore find that the sentence passed by the trial court was illegal and it is hereby accordingly set aside.

With regard to the offence of kidnapping with intent to procure a ransom contrary to section 243 of the Penal Code Act, we find that the learned trial Judge did not take into account the period the Appellant spent on remand as stipulated by Article 23(8) of the Constitution. We also find that the sentence of 17 years was illegal. As such, we shall proceed to resentence the Appellant on both counts under Section 11 of the Judicature Act.

Section 11 of the **Judicature Act** vests this court with the same powers as the trial Court in the following terms:

> ***"11. Court of Appeal to have powers of the court of original jurisdiction.***
>
> *For the purpose of hearing and determining an appeal, the Court of Appeal shall have all the powers, authority and jurisdiction vested under any written law in the court from the exercise of the original jurisdiction of which the appeal originally emanated."*

In the exercise of the above mandate, we have considered the mitigating factors that were presented during the Allocutus of the Appellant. He is a first offender, there being no record of previous conviction in Uganda. He has a family that resides in South Africa for which he is the sole bread winner. He also provides for relatives who reside in Nigeria.

However, we take cognizance of the fact that these offences were planned by international criminals who included the Appellant. The Appellant and his

accomplices propagated a crime that required the victims to incur high travel costs to Uganda. The Appellant rented a house, hired vehicles and recruited 'staff' to perpetuate the offence. The Appellant and his accomplices were arrested in the course of committing a similar offence. That shows that they are not ordinary criminals.

Executing these crimes in Uganda put this country into great disrepute. That does not only reflect Uganda as an unsafe place, but it compromises our tourism sector. This court is duty bound to protect this natural resource. There is therefore need to pass a sentence that will deter this kind of sophisticated crimes.

As such on count one, the Appellant is sentenced to 30 years' imprisonment. From that we deduct the period of 8 years that the Appellant has spent on remand. On count two, we sentence the Appellant to 10 years' imprisonment and deduct the eight years that he spent on remand. The sentences are to run consecutively, with effect from 16th November 2021, the date of conviction.

-We so order.

Delivered and dated this ..... 26th ..... day of ..... December ..... 2024.

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RICHARD BUTEERA
Deputy Chief Justice

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CHRISTOPHER GASHIRABAKE
Justice of Appeal

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OSCAR JOHN KIHIKA
Justice of Appeal