

5 **THE REPUBLIC OF UGANDA**

**IN THE COURT OF APPEAL OF UGANDA AT KABALE**

[Coram: M.M. Kibeedi, C. Gashirabake & O. Kihika, JJA]

CRIMINAL APPEAL NO. ~~207~~ OF 2017

MUTUNGI IVAN..... APPELLANT

10 **VERSUS**

UGANDA.....RESPONDENT

(Appeal from the Judgment of Hon. Justice Moses Kazibwe Kawumi at the High Court of Uganda Holden at Rukungiri delivered on the 11<sup>th</sup> of May 2017)

**JUDGMENT OF THE COURT**

15 **Introduction**

1] Tumuhimbise Enid (hereinafter the victim) was a resident of Muniga Cell, Kihanga Parish, Buhunga Sub-County within Rukungiri District. Mutungi Ivan (hereinafter the Appellant) was at the time of commission of the offence a resident of Bikungu Cell, Nyibingo Parish, Kebisoni Sub-County within Rukungiri District. On the 30th day of July 2013, around 1:00 a.m., while the victim was sleeping in her house, she suddenly had people banging her door several times. She raised an alarm from her house but the attackers continued banging the door. The bangs forced the door open. Two men entered the house. They went to where the victim was and ordered her to sit down. The victim immediately identified the Appellant but failed to identify the second attacker. They asked for the money that the victim was keeping for UWESO (Uganda Women's Efforts to Save Orphans). The victim told the attackers that she did not have the money. The Appellant pulled out a knife and threatened to cut off her neck. They asked her to surrender the money to save her life. The thugs beat up the victim and inflicted injuries on her. She surrendered Uganda Shillings 2,500,000/= (Two million five hundred thousand



5 shillings only) that she was keeping. After handing over money to the  
thugs the victim gained courage grabbed the accused Appellant by his  
sweater, and raised an alarm. The Appellant abandoned a cap-blue and  
white colour and the Baptism card in the name of Mutungi Ivan with a  
Passport Photo. The other thug abandoned a "Boy Sharp" cap-green in  
10 colour. The alarm attracted the residents to the Scene of Crime. The  
residents identified one of the caps left at the Scene of Crime as that of  
Mutungi Ivan. The matter was reported to the Police for investigation.  
The Appellant was arrested, indicted, tried, and convicted on his own plea  
of guilty on a plea bargain agreement. He was sentenced to 7 years'  
15 imprisonment after deducting the remand period of three years.

2] The Appellant being aggrieved with the decision of the High Court  
appealed to this Court. The appeal is premised on three grounds set out in  
the Memorandum of Appeal as follows:

- 20 1. *The learned trial Judge erred in law and fact when he failed to  
adequately evaluate and appraise prosecution evidence alongside  
the defence thereby wrongly convicted Mutungi Ivan alias  
Tumukunde Ivan Appellant of aggravated robbery.*
- 25 2. *The learned trial Judge erred in law and fact when he ignored the  
circumstances of the case judgment headnote it is criminal session  
Case No. 01 of 2014 on UC Form 80 headnote warrant of  
commitment on sentence of imprisonment it is criminal session  
Case No. 134 of 2014.*
- 30 3. *The learned trial Judge erred in law and fact when he ignored the  
circumstances of the case and ordered the superintendent of prison  
to receive Mutungi Ivan alias Tumukunde Ivan into custody that  
for avoidance of doubt, the sentence shall commence after the  
convict has completed 7 years imposed in HCT-CSC-NO 0059 of  
2014.*

### **Legal Representation**



5 3] At the hearing, the Appellant was represented by Seth Rukundo. The Respondent was represented by Mr. Joseph Kyomuhendo Chief State Attorney standing in for Mr. Adrine Asingwire.

10 4] Before addressing the issues, Counsel for the Appellant sought leave to consolidate the lower Court records of Rukungiri High Court Criminal Session Case No. 01 of 2014, Criminal Session Case No. 134 of 2014, and Criminal Session Case No. 0059 of 2014

#### **Submissions for the Appellant**

15 5] Counsel for the Appellant jointly submitted on all three grounds. Counsel submitted that the trial Judge ignored the circumstances of the case and ordered the superintendent of prison to receive Mutungi Ivan alias Tumukunde Ivan into custody that for the avoidance of doubt, the sentence would commence after the convict had completed 7 years imposed in HCT-CSC-No 0059 of 2014.

20 6] We note that the submissions of counsel for the Appellant are uncoordinated. They do not refer to the matter before this Court, so we did not find it prudent to reproduce them in this Judgment.

#### **Submissions for the Respondent**

25 7] Counsel for the Respondent submitted that the appeal is incompetent in its entirety and should be struck out. Counsel submitted that the grounds of appeal offend Rule 66(2) of the Judicature ( Court of Appeal Rules) Directions S.I 13-10. Counsel submitted that the grounds are too general, and do not specify in what way and in which specific areas the learned trial Judge made wrong decisions.

30 8] Furthermore, counsel submitted that the record of appeal shows that the Appellant and the Respondent entered a Plea Bargain agreement upon which the Appellant was convicted and sentenced accordingly. Counsel argued that this meant that the submissions relating to the evaluation of



5 evidence were irrelevant to this appeal and should be rightly regarded as  
so.

9] Counsel also argued that the criminal appeal was captured as criminal  
appeal number 207 of 2017 by this honourable Court and by counsel for  
the Appellant on the Memorandum of Appeal. This implies that the  
10 learned Appellant's counsel for the Appellant should have filed a  
Memorandum of Appeal and submissions relevant to the record of  
appeal.

10] Counsel submitted that the Respondent has established that the  
Notice of Appeal captures criminal Session case number 59 and 134 of  
15 2014 implying that the Appellant had two files. However, according to  
the judgment in Rukungiri Criminal session case number 01 / 2014  
attached by counsel for the Appellant, the Appellant was indicted of  
murder and Aggravated robbery. Counsel submitted that this Appeal  
should be struck out.

20 11] Counsel prayed that this Court renders the Appeal incompetent.

**Consideration of Court.**

12] This is a first Appeal. As a first Appellate Court, it is the duty of  
this Court to re-evaluate the evidence, weighing conflicting evidence, and  
reach its own conclusion on the evidence, bearing in mind that it did not  
25 see and hear the witnesses. According to Rule 30(1)(a) of the Judicature  
(Court of Appeal Rules) Directions S.I 13-10.

13] In the case of **Kifamunte Vs. Uganda, Supreme Court Criminal  
Appeal No. 10 of 1997**, the Court stated that:

30 *"We agree that on the first appeal, from a conviction by a Judge, the  
Appellant is entitled to have the Appellate Court's own consideration  
and views of the evidence as a whole and its own decision thereon.  
The first Appellate Court has a duty to review the evidence of the case  
and to reconsider the materials before the trial Judge. The Appellate  
Court must then make up its own mind not disregarding the judgment*



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*appealed from but carefully weighing and considering it.” See also the cases of Pandya Vs. R[1957]EA 336, Bogere Moses Vs. Uganda, SCCA No.1 of 1997*

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14] The Respondent raised a preliminary objection that the grounds offend Rule 66(2) of the Rules of this Court, which requires that a ground of appeal should be specific and not narrative clearly pointing out either a point of law or fact that was wrongly decided by the trial Judge. This Rule provides that:

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*“The Memorandum of appeal shall set forth concisely and under distinct heads numbered consecutively, without argument or narrative, the grounds of objection to the decision appealed against, specifying in the case of a first appeal the points of law or fact or mixed law and fact..... wrongly decided.”*

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15] In the case of **Mugerwa John Vs. Uganda, Criminal Appeal No. 0375 of 2020**, Court held that:

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*“.. A simple reading of the first ground of appeal shows that the appellant has not pointed out what point of law or fact the learned trial judge failed to evaluate. An Appellant cannot and should not throw grounds of appeal at Court and expect Court to wade through them looking for where the learned trial Judge went wrong an appellant has a duty under Rule 66(2) of the Rules of this Court to set forth concisely the grounds of objection to the decision appealed against. The appellant must in a first appeal, which this one is specify the fact or mixed law and fact which he is alleging was wrongly decided.”*

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16] Similarly, in the case of **Benjamin Oteka Vs. Uganda, Criminal Appeal No. 175 of 2018**, the Court held that the Appellant is required to outlined in his Memorandum of Appeal the points of law that are alleged to have been wrongly decided. The Court struck out grounds similar to

5 the one here for being incurably defective and dismissed the appeal for  
lack of merit.

17] We have perused through the Court record, and we find that all the  
grounds offend Rule 66(2). The Rule requires that the Appellant clearly  
states the grounds of objection to the decision appealed against. First of  
10 all, the grounds are not clear, they are argumentative and narrative.  
Secondly, the appeal lies against the decision delivered on the 11<sup>th</sup> of  
May 2017, yet the decision on record concerns Criminal session Number  
59 of 2014. The decision in this matter arose out of a plea bargain  
agreement. Whereas an Appellant can appeal against a bargain  
15 agreement, the right of appeal is restricted by Rule 12 (1)(g) to grounds of  
illegality occasioning injustice, severity of punishment or if the sentence  
was outside the Plea Bargain Agreement. None of these grounds were  
raised by the appellant among the grounds of appeal. It is evident from  
the record that the Appellant was convicted upon a plea bargain  
20 agreement. This meant that the Court did not have the opportunity to  
evaluate any evidence. Furthermore, the submissions made by the  
Appellant counsel are not relevant to the record of appeal. We therefore  
find that this Appeal was misconceived.

18] We find that the appeal does not have merit and is accordingly  
25 dismissed.

19] The appellant will continue serving his sentence.

20] The Orders of the Lower Court are upheld.

**We so Order**

30 **Dated, signed and delivered this 27<sup>th</sup> Nov day of 2024.**



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**MUZAMIRU MUTANGULA KIBEEDI**

**JUSTICE OF APPEAL**

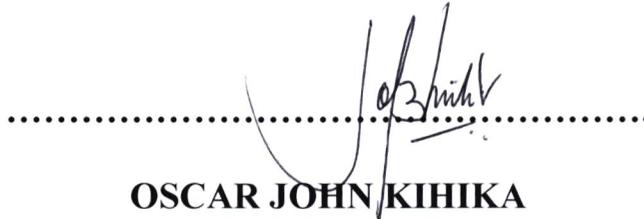
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**CHRISTOPHER GASHIRABAKE**

**JUSTICE OF APPEAL**

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**OSCAR JOHN KIHKA**

**JUSTICE OF APPEAL**