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**THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT GULU
CRIMINAL APPEAL NO. 0115 OF 2013**

OYET TWOL.....APPELLANT

VERSUS

10 **UGANDA.....RESPONDENT**

*(An appeal from the decision of the High Court at Gulu before His Lordship
Hon. Justice Alfonse C. Owiny-Dollo dated 6th day of August, 2013 in Criminal
Case No. 0008 of 2012)*

15 **CORAM: HON. MR. JUSTICE KENNETH KAKURU, JA**

HON. MR. JUSTICE F.M.S EGONDA- NTENDE, JA

HON. LADY JUSTICE HELLEN OBURA, JA

JUDGMENT OF THE COURT

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This appeal arises from the decision of His Lordship Alfonse C. Owiny- Dollo J, (as he then was) in High Court *Criminal Case No. 0008 of 2012*, in which the appellant was convicted of the offence of aggravated robbery contrary to *Sections 285 and 286* of the Penal Code Act (Cap 120) and sentenced to 40

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years imprisonment.
The appellant being dissatisfied with the decision of High Court now appeals against sentence only.

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At the hearing of the appeal, learned Counsel *Ms. Alice Akello Latigo* appeared for the appellant while *Mr. Martin Rukundo* learned Principal State Attorney appeared for the respondent. The appellant was in Court.

5 **Appellant's case**

Ms. Alice Akello first sought and was granted leave to regularise the Notice of Appeal that was filed out of time and to appeal against sentence alone.

10 Counsel submitted that, the learned trial Judge erred in law and fact when he failed to comply with the provisions of *Article 23 (8)* of the Constitution thereby rendering the sentence a nullity.

She asked this Court to find that the sentence is a nullity and invoke Section 11 of the Judicature Act, and impose a sentence of its own taking into account all the relevant factors. She relied on the Supreme Court decision of *Rwabugande Moses Vs Uganda, Supreme Court Criminal Appeal No. 25 of 2014*,
15 for the proposition that;-

"The Court shall take into account any period spent on remand in determining an appropriate sentence.

The Court shall deduct the period spent on remand from the sentence considered appropriate after all factors have been taken into account."

20 Counsel, thereafter, asked this Court to reduce the sentence to 15 years imprisonment and upon deducting 1 year and 9 months the period the appellant had spent on remand, the appellant would have to serve a sentence of 13 years and 9 months from the date of his conviction.

Respondent's reply

25 Mr. Rukundo, learned Senior State Attorney conceded that, the trial Judge did not follow the provisions of *Article 23 (8)* of the Constitution, which requires that while passing sentence the Court has to take into account the period the accused has spent on pre-trial detention by subtracting it from the sentence to be passed thus rendering the sentence a nullity. He asked this Court to invoke

5 Section 11 of the Judicature Act and exercise the powers of the trial Court to sentence the appellant to an appropriate sentence. He asked Court to sentence the appellant to 20 years imprisonment.

Resolution of issues

This is a first appeal and as such we are required to re-appraise the evidence
10 adduced at the trial and make our own inference on issues of law and fact.

See;- Rule 30 (1) of the Rules of this Court, *Bogere Moses Vs Uganda, Supreme Court Criminal Appeal No. 1 of 1997* and *Kifamunte Henry Vs Uganda, Supreme Court Criminal Appeal No. 10 of 1997*.

Both Counsel agree that, the sentence of 40 years imprisonment imposed by
15 the trial Judge ought to be set aside, as he did not take into account the pre-trial detention period the appellant had spent on remand. This omission, both Counsel agreed renders the sentence illegal.

In this case, we find that, the learned trial Judge, with all due respect, did not
20 comply with the provisions of *Article 23 (8)* of the Constitution which requires the Court to take into consideration the pre-trial detention period before passing sentence, by deducting it from the sentence that would otherwise have been imposed. The trial Judge while passing the sentence stated as follows;-

25 *"Since the convict has no sense of the rule of law and has caused injuries on the victim that have greatly weakened the victim, he must be given corresponding punitive sentence to serve as a warning to all that the law will not condone this type of action which is synonymous with the animal kingdom where terror by the mighty is permitted to reign supreme. I*

5 accordingly sentence him to 40 years in jail from the date of this sentence.”

Clearly the trial Judge did not comply with *Article 23 (8)* of the Constitution.

Because of the above omission alone, we find that the sentence imposed by the trial Judge is a nullity as it contravenes the Constitution. See;- *Rwabugande*
10 *Moses Vs Uganda, Supreme Court Criminal Appeal No. 25 of 2014.*

Having found so, we invoke the provisions of *Section 11* of the Judicature Act (CAP 13), which grants this Court the same powers as that of the trial Court, in circumstances such as we now find ourselves, to impose a sentence we consider appropriate in the circumstances of this appeal.

15 The appellant in this case deliberately used a deadly weapon in the commission of the offence of robbery. He premeditated the crime. He caused serious injuries on the victim. These are serious aggravating factors.

However, he was a relatively young man, aged 36 years old at the time. He was a first offender. He had spent 1 year and 9 months on remand.

20 In *Olupot sharif & Another Vs Uganda, Court of Appeal Criminal Appeal No. 0730 of 2014*, the appellant was convicted of the offence of aggravated robbery and was sentenced to 40 years imprisonment. On appeal, this Court reduced the sentence to 32 years imprisonment.

In *Muchungunzi Benon & Another Vs Uganda, Court of Appeal Criminal Appeal*
25 *No. 0008 of 2008*, this Court upheld a sentence of 15 years imprisonment for the offence of aggravated robbery.

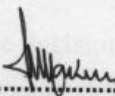
In *Tumusiime Obed & Another Vs Uganda, Court of Appeal Criminal Appeal No. 149 of 2010*, the appellant was convicted of aggravated robbery and sentenced to 16 years imprisonment. On appeal to this Court, it was reduced to 14 years.

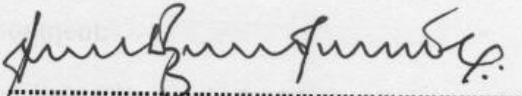
5 We find that the sentences imposed or confirmed by this Court for aggravated robbery range from 14 years to 35 years. See;- *Tumusiime Obed & Another Vs Uganda, Court of Appeal Criminal Appeal No. 149 of 2010.*

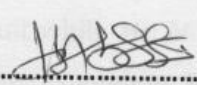
Taking into account all the aggravating and mitigating factors of this case and the decisions of this Court and the Supreme Court cited above and those not
10 cited, we consider that a term of 15 years imprisonment will meet the ends of justice. We now deduct from 15 years, 1 year and 9 months the appellant spent in pre-trial detention and order that he serves 13 years and 9 months in prison starting from 6th August, 2013, the day he was convicted.

We so order.

15 Dated at Gulu this 7th day of November 2017.

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HON. MR. JUSTICE KENNETH KAKURU
JUSTICE OF APPEAL

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HON. MR. JUSTICE F.M.S EGONDA -NTENDE
JUSTICE OF APPEAL

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HON. LADY JUSTICE HELLEN OBURA
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