

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA SITTING AT MASAKA
CRIMINAL APPEAL NO. 137 OF 2012

SSEMIYINGO MARK ::: APPELLANT

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VERSUS

UGANDA ::: RESPONDENT

(Arising from the judgment of Justice Akiiki Kiiza in Masaka Criminal Session Case No. 144 of 2011.)

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CORAM: HON. JUSTICE EGONDA NTENDE, JA
HON. JUSTICE, HELLEN OBURA, JA
HON. JUSTICE, STEPHEN MUSOTA JA

JUDGMENT OF THE COURT

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The appellant was indicted, tried and convicted of Aggravated Robbery contrary to Sections 285 and 286 of the Penal Code Act and sentenced to 15 years' imprisonment. He has appealed against sentence only.

Background

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On an unknown date in the month of March 2011, the victim, Lukyamuzi Emmanuel, was riding his motorcycle Reg. No. UDM 387N Bajaj Boxer along villa Maria Nyendo road when he encountered a road block of a rope which had been spread across the road thereby preventing him from crossing. He was entangled

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by the rope and fell off the motorcycle. After he fell down, two men dressed in civilian clothes emerged but one had a panga and threatened to cut him if he made an alarm. The victim took off leaving his motorcycle behind. On 18/03/2011, when the police were on usual patrol around Kabonera Trading Centre in Rakai

District they saw a motorcycle being ridden by unknown persons. The appellant was being ridden by another person who, upon the police interjection, run off leaving the appellant behind. He was arrested and found with a panga hidden in the shoulders. The
5 appellant was first charged with possession of stolen property but when the victim surfaced, the charge was amended to aggravated robbery. The motorcycle was found to belong to the victim.

The appellant, with leave of this Court, appeals against sentence only on the ground that;

- 10 1. The learned trial Judge erred in law and fact when she sentenced the appellant to 15 years' imprisonment which was excessive in the circumstances.

Representation

Ms. Nansubuga Margarèt represented the appellant on state brief
15 while Mr. Ndamurani David Atenyi, Senior Assistant DPP, represented the Respondent.

Submissions of the appellant

Counsel cited Rule 30 of the Court of Appeal Rules and the case of
20 **Kifamunte Henry vs. Uganda, Supreme Court Criminal Appeal Number 10 of 1997** on the duty of this court on a first appeal. He also cited **Kiwalabye Bernard vs. Uganda Supreme Court Criminal Appeal Number 143 of 2001** on circumstances under which this court may interfere with sentence. It has often been held that the Court of Appeal may not interfere with the sentence
25 imposed unless the exercise of the jurisdiction by the trial court results into a sentence which is manifestly excessive or too low to amount to a miscarriage of justice or where the sentence was based on a wrong principle of law.

Counsel submitted that the trial judge did not take into account
30 some of the mitigating factors when he sentenced the appellant to 15 years imprisonment for the offence of aggravated robbery. For instance that the motorcycle which had been stolen was recovered, there was no injury or death during the robbery, the appellant had

no previous criminal record and is a man with a family. In addition, that the appellant pleaded guilty and was remorseful. She prayed that the appeal be allowed and the sentence be reduced accordingly.

5 **Submissions for the respondent**

Counsel for the respondent opposed the appeal and submitted that the trial judge properly directed himself in sentencing the appellant to 15 years imprisonment in the circumstances of this case. In the instant case, the maximum sentence for aggravated robbery is one of death and the sentence of 15 years viewed against the maximum sentence provided by the law cannot by any reasonable standards be described as manifestly excessive.

The duty of a first appellate court

15 A first appellate court must review/rehear the evidence and consider all the material facts before the trial court and come to its own conclusion regarding the facts, taking into account that it has not seen nor heard the witnesses and in this regard, it should be guided by the observations of the trial court regarding the demeanor of witnesses. See **Rule 30** of the **Judicature (Court of**
20 **Appeal Rules) Directions SI 13-10** under which this Court has power to re-appraise the evidence and draw inferences of fact. See **Pandya v R [1957] EA p.336 and Kifamunte v Uganda Supreme Court Criminal Appeal No. 10 of 1997.**

25 **Consideration of sentence**

The principles on which this Court may interfere with a sentence are well settled. An appellate court should not interfere with a sentence imposed by a trial court where the trial court has exercised its discretion on sentence, unless the exercise of that discretion is such that it results in the sentence imposed to be manifestly excessive or so low as to amount to a miscarriage of justice, or where the trial court ignored to consider an important matter or circumstance which ought to be considered while passing

sentence or where the sentence imposed is wrong in principle (see **Kyewalabye Bernard v. Uganda Supreme Court Criminal Appeal No. 143 of 2001**). It does not matter that this Court would have given a different sentence if it had been the one trying the appellant (see **Ogalo s/o Owoura v. R (1954) 24 EACA 270**).

These principles have guided the Court in the resolution of this appeal. We have also considered the submissions of the parties and the authorities cited.

The appellant complains that the sentence is excessive and that the trial Judge did not consider the fact that the stolen motor cycle had been recovered. In addition, no injury was inflicted on the victim and the appellant pleaded guilty, thus did not waste court's time. The appellant was also a first time offender who was 28 years old at the time the offense was committed.

It is established law and practice that punishment for an offence is meant to be a retribution as well as a deterrent. It is also meant to rehabilitate the offender. The sentencing Judge should ideally take into account the aggravating factors and the mitigating factors before sentencing. On mitigating factors, the appellant was only 28 years at the time the offence was committed and was a first time offender. The motorcycle that had been stolen was recovered. The appellant pleaded guilty and did not waste court's time. He was a youth who was capable of reforming. These should have been considered as mitigating factors by the sentencing Judge.

Having taken into account both mitigating and aggravating factors, and having considered the period of 1 year and 2 months spent on remand, we set aside the 15 year sentence and substitute it with a sentence of 12 year's imprisonment from the date of conviction which was 11/05/2012. The appeal is therefore allowed.

We so order

Dated this ...^{30th}... Day ofJuly..... 2018

Signed



Hon. Justice Egonda Ntende, JA

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Hon. Justice, Hellen Obura, JA

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Hon. Justice, Stephen Musota JA

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