

When the attackers left, Suuna returned to rescue Kiyimba. Thereafter, he took him to a medical centre for urgent treatment. On 23rd January, 2012, one Kateregga was arrested in Kitintale with the stolen motorcycle. Upon his arrest, Kateregga told Police that the motorcycle belonged to his boss, Mawanda Moses, a resident of Masaka. Mawanda was traced by Police and upon interrogation, said that he bought the stolen motorcycle from the appellant at Shs. 1.5 million.

It was then that the appellant was arrested from Nyondo and charged with Aggravated Robbery. When interrogated, the appellant admitted having committed the offence. On 3rd April, 2012, he was examined on Police Form 24 and found to be 18 years old and mentally normal. When the above facts were put to him, the appellant confirmed the same to be correct. He was thereafter duly convicted and sentenced as indicated above. Being dissatisfied with the sentence imposed on him, the appellant preferred the present appeal against sentence only on the sole ground that:

"The learned trial Judge erred in law and fact by sentencing the appellant to 15 years imprisonment which was manifestly harsh and excessive."

This Court granted leave to the appellant through his Counsel, to proceed with the appeal against sentence only.

Representation

At the hearing of the appeal, Mr. Tusingwire Andrew, learned Counsel, represented the appellant on State Brief, while, Mr. Nkwasiwe Ivan, learned Senior State Attorney from the Office of the Director of Public Prosecutions, represented the respondent. Counsel for each party made oral submissions which this Court considered in determining the present appeal.

Resolution of the Appeal

We have carefully considered the submissions of counsel for each side, the court record as well as the law and authorities cited and those not cited which are relevant in the determination of the present appeal. This is a first appeal and we are alive to the duty of this Court as a first appellate court to reappraise the evidence and come up with its own inferences. **See: Rule 30**



(1) of the Rules of this Court and Kifamunte Henry v. Uganda, Supreme Court Criminal Appeal No. 10 of 1997.

The above stated duty is not diminished in appeals concerning sentence alone like the present appeal. Even in such cases, the first appellate Court must reappraise the evidence, and make up its mind on whether the sentence imposed by the trial Court may be sustained.

After perusing the Court record, we have formed the view that the age of the appellant at the time of the commission of the offences raises a point of law which may dispose of the appeal. We note that at the time of the allocutus in the trial Court on 24th of April, 2013, the appellant was 19 years old. At the time of the alleged commission of the offence in question on 22nd April, 2012, the appellant would have been 1 year and 2 days younger, meaning that he was 17 years and 363 days old. He was below the age of 18 years and was therefore a child.

We further note that at the time of the commission of the offences in question, the appellant was a school going person attending his Senior Four which further supports the finding that he may have been below the age of 18 years at the time. For some reason, however, the learned trial Judge did not inquire into the age of the appellant to satisfy herself as to his exact age which may be fatal to his conviction and sentence. There was no medical examination of the appellant to ascertain his precise age.

We note that a person is considered to be a child for purposes of sentencing if he/she is below the age of 18 years at the time of commission of the offence in question. We further note that the appropriate orders to be made when a child is convicted of any offence by the High Court would be to remit his/her case to the Family and Children Court for it to impose an appropriate sentence. **See: Birembo Sebastian & Anor vs Uganda, Supreme Court Criminal Appeal No. 0020 of 2001.**

In **Sendyose Joseph vs. Uganda, Court of Appeal Criminal Appeal No. 150 of 2010**, the Court observed that:



"...We agree that since the offence was alleged to have been committed at the time when the appellant was a child the appellant ought to have been punished as a child, in accordance with provisions of the Children Act.

This is because the guilty mind that committed the alleged offence was of a child and the punishment being imposed relates to that offence at that time.

We agree that the correct procedure would have been for the Judge to send the appellant to the Family and Children Court for sentencing under the provisions of Section 94 of that Act.

Section 94 (1) provides as follows:-

1) A family and children court shall have the power to make any of the following orders where the charges have been admitted or proved against a child-

(g) detention for a maximum of three months for a child under sixteen years of age and a maximum of twelve months for a child above sixteen years of age and in the case of an offence punishable by death, three years in respect of any child.

The above provision of the law settles this issue. By providing that a Family and Children Court may sentence a child convicted of an offence punishable by death to three years in respect of any child, which offence is not triable by that court means that the High Court has to remit the convicted child to a Family and Children Court for sentencing. (Emphasis)

...

Ordinarily therefore this case should have been remitted to the Family and Children Court for sentencing. However, in this particular case the appellant has been in prison for more than 3 years.

Three years imprisonment is the maximum sentence the appellant could have served under Section 94 (1) (g) of the Children Act (Cap 59). Regrettably he has been in prison much longer.

The learned trial judge therefore had no jurisdiction to impose punishment on the appellant.

The sentence imposed by the learned trial judge was therefore illegal in law and it is accordingly set aside.



We hereby order the immediate release of the appellant.

In view of the provisions of The Children Act, Cap 59, the appellant should never have been on remand for all those years. This was a blatant violation of his constitutional rights.

It appears that such cases are not uncommon in our judicial system. We direct the Registrar of this Court to bring to the attention of all Courts and the DPP this judgment and request that necessary measures be put in place to remedy injustice that has resulted or may result from such other cases."

In view of the above authority, it is clear that matters of sentencing a child should never be handled lightly. Historically, it is generally agreed that a child does not have a fully developed mental capacity to appreciate commission of crime and its consequences. Having made the fore going observations, we add that, the learned trial Judge did not seem to take this role seriously. We have made a finding earlier in this judgment that the appellant was below the age of 18 years at the time of commission of the offences in question. It is clear under the **Children Act, Cap. 59** that he was supposed to be sent to the Family and Children Court for sentencing upon conviction by the learned trial Judge but he was not. The sentence passed by the trial Court in those circumstances was illegal for that reason. It cannot be left to stand.

Moreover, a child who is convicted of an offence punishable by death as the appellant was, is liable for detention for a maximum period of 3 years. From the record it is clear that the appellant has been incarcerated for more than 3 years now. As such, the only alternative is to order that he be set free unless he is being held on other lawful charges. We accordingly so order.

This Appeal stands allowed.

We so order.

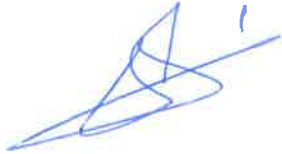
A handwritten signature in blue ink, appearing to be 'J. M. ...', is written over a faint, illegible stamp or text.

Dated at Masaka this 9th day of Dec 2019.



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Elizabeth Musoke

Justice of Appeal



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Ezekiel Muhanguzi

Justice of Appeal



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Remmy Kasule

Ag. Justice of Appeal