

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CRIMINAL APPEAL NO. 0600 OF 2014

SAAVA SEDU TONNY.....APPELLANT

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VERSUS

UGANDA.....RESPONDENT

(Appeal against re-sentence of the High Court of Uganda at Kololo before Moses Mukiibi, J dated 4/12/2012 in High Court Criminal Session Case No. 0250 of 2013)

10 **Coram: Hon. Lady Justice Elizabeth Musoke, JA**

Hon. Lady Justice Hellen Obura, JA

Hon. Mr. Justice Ezekiel Muhanguzi, JA

JUDGMENT OF THE COURT

15 **Introduction.**

This is an appeal from the decision of the High Court sitting at Kololo in Criminal Session Case No. 0250 of 2013 (in re-sentencing) delivered on 4/12/2012 by Moses Mukiibi, J in which the appellant was sentenced to a term of imprisonment for 21 years and 7 months for the offence of aggravated robbery contrary to sections 285 and 286(2) of the Penal Code Act, Cap. 120.

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Brief background.

25 The facts of this case as accepted by the learned trial judge are that on
25/4/2000 around 10:20 am, one Bogere Siraji was driving motor vehicle
Registration No. UAA 760T loaded with passengers from Luwero to
Kampala. He had one Kawesa Richard as a conductor. On reaching
Bombo, the accused and two others all armed with pistols ordered the
30 driver to stop. The appellant and his colleagues are said to have robbed
money and other valuables from the passengers after warning them not
to dare make any noise lest they be killed. The appellant and his
colleagues drove the motor vehicle towards Kawanda but branched off
the main road and went up to Watindo Trading Centre where they
35 ordered the other passengers to get off the vehicle and they proceeded
with the driver (Bogere) for about 30 meters. The appellant then shot
the said Bogere on the forehead, pushed him out of the vehicle and they
drove away. The motor vehicle was abandoned somewhere in Wakiso
District. The case was reported to Kawempe Police Station and
40 investigations were instituted. The appellant was sighted by Kawesa
Richard who identified him to the arresting policemen in the New Taxi
Park in Kampala City. He was arrested and indicted accordingly.

Initially, the appellant was sentenced to the mandatory death sentence
which was then by law the only sentence handed out to persons
45 convicted of aggravated robbery. However, following the directive by
the Supreme Court in **AG V Susan Kigula & 417 Ors, Supreme Court
Constitutional Appeal No. 03 of 2006**, where the mandatory death
sentence was held to be unconstitutional, the appellant's file was
remitted back to the High Court for re-sentencing. The appellant was
50 then sentenced to serve a term of 35 years imprisonment by the learned
re-sentencing Judge, Moses Mukiibi, J. The learned re-sentencing Judge



then deducted the period of 13 years and 5 months the appellant had spent in prison before and after conviction. The appellant was then ordered to serve a sentence of 21 years and 7 months imprisonment.

55 Being dissatisfied with the decision of the learned re-sentencing Judge, the appellant lodged this appeal in this court against sentence only with leave of this court under section 132(1) (b) of the Trial on Indictments Act, Cap. 23. The single ground was framed as follows:-

60 *“That the learned trial Judge erred in law when he re-sentenced the appellant to 35 years imprisonment without due regard to all the mitigating factors, which sentence is deemed to be harsh and excessive in the circumstances of the case.”*

Representation.

At the hearing of this appeal, the appellant was represented by Ms. 65 Wakabala Susan Sylvia, learned Counsel while the respondent was represented by Ms. Joanita Tumwikirize, learned State Attorney. The appellant was present in court.

Submissions by the appellant.

70 Counsel for the appellant submitted that the sentence of 35 years imprisonment was harsh and excessive in the circumstances of this case. She faulted the learned re-sentencing Judge for not taking into consideration the mitigating factors submitted by counsel for the appellant and the appellant himself as a whole at re-sentencing especially the fact that the appellant had a mental problem. In support 75 of this argument, counsel relied on ***Bwangalo Herbert & 2 Ors v Uganda, Court of Appeal Criminal Appeal No. 733 of 2014*** where a sentence of 37 years imprisonment was reduced to 18 years imprisonment for the

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offence of murder considering the fact that the appellant in that case had a mental problem.

80 Counsel asked court to allow the appeal, set aside the sentence of 21 years and 7 months and substitute it with an appropriate one.

Submissions by the respondent

85 The learned State Attorney opposed the appeal and supported the sentence imposed by the learned re-sentencing Judge. She submitted that a sentence of 35 years imprisonment was not harsh and excessive in the circumstances of this case because of the manner in which the offence was committed, that is, the part of the body injured and the weapon used.

90 Counsel submitted that the medical report in relation to the mental status of the appellant shows in detail that the appellant had greatly improved and was of a normal mental status at the time of his sentence.

95 Counsel submitted further that the learned re-sentencing Judge took into account all the mitigating and aggravating factors and thus reduced a death sentence to 35 years imprisonment and further reduced the same to a lenient sentence of 21 years and 7 months imprisonment subject to remission after deducting all the period the appellant had spent in prison before and after conviction. In support of this argument, she relied on ***Semanda Christopher & Anor v Uganda, Court of Appeal Criminal Appeal No. 77 of 2010***, where this court confirmed a sentence
100 of 35 years imprisonment for the offence of murder.

Counsel asked court to disallow the appeal and confirm the sentence.



Consideration by Court

105 We have carefully listened to the submissions of both counsel. We have carefully perused the court record and the authorities cited to us.

We are alive to the law that requires us as a first appellate court to re-appraise all the evidence and come up with our own inferences. See: Rule 30(1) of the Judicature (Court of Appeal Rules) Directions SI 13-10, 110 ***Bogere Moses v Uganda, Supreme Court Criminal Appeal No. 1 of 1997*** and ***Kifamunte Henry v Uganda, Supreme Court Criminal Appeal No. 10 of 1997.***

This court may not interfere with the trial judge's discretion on sentence except only in limited circumstances. Those circumstances have been set 115 out by the Supreme Court and this Court in numerous cases. The Supreme Court in ***Kiwalabye Bernard v Uganda, Supreme Court Criminal Appeal No. 143 of 2001*** held as follows:-

120 ***"The appellate Court is not to interfere with sentence imposed by a trial court which has exercised its discretion on sentence unless the exercise of the 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 a trial Court ignores to consider an important matter or circumstances which ought to be considered when passing the sentence or where the sentence imposed is wrong in principle."***

125 The learned re-sentencing Judge while passing sentence on pages 79, 82 and 83 of the Record of Appeal stated as follows:-

130 ***"The convict is now 37 years. He is a first offender. He was on remand, before his conviction on 23/5/2003, from 28/6/2000 for a period of 2 years and 11 months. Since his conviction the convict has been in prison for 10 years, 6 months and 10 days.***



135 *I have taken into account all the mitigating factors which have been presented to court. I have particularly taken into account the progressive rehabilitation process the convict has undertaken. I agree that the convict has acquired skills intended to make him a useful citizen. He is now better equipped to find himself some employment. I have considered all the aggravating factors of the offence. I have also considered the circumstances of the convict.*

140 *I therefore sentence the convict to thirty five (35) years imprisonment. I now deduct 13 years and 5 months representing the total period the convict has spent in prison and the period spent in prison after conviction. This leaves a balance of a term of 21 years and 7 months imprisonment to be served by the convict subject to remission."*

145 From the above findings of the learned re-sentencing Judge, it is apparent that the judge had intended to impose on the appellant a 35 year sentence. He then considered the period of 2 years and 11 months the appellant had spent on remand and the period he had spent in custody from the time of conviction to the time of re-sentencing which was 10 years and 6 months. He altogether deducted a total of 13 years and 5 months from the 35 years and then sentenced the appellant to 21
150 years and 7 months imprisonment.

We find that the sentence was ambiguous and we set it aside on that account. We also find that the learned Judge misdirected himself on the sentencing procedure. Article 23(8) of the Constitution provides as follows;-

155 *"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."*



160 From the above Constitutional provision, it is clear to us that the only
period to be taken into account before passing a sentence is the pre-
conviction period. In this case, the learned re-sentencing Judge should
have taken into account the pre-conviction period of 2 years and 11
months only and not the period after conviction. He should have
imposed a more appropriate sentence.

165 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, to impose a sentence we consider appropriate in the
circumstances of this case.

170 In the instant case, the appellant committed a grave offence of
aggravated robbery which carries a maximum sentence of a death
penalty. A deadly weapon was used (a pistol) and the victim was severely
injured. However, the appellant was 24 years old at the time of the
commission of the offence. He is likely to reform. He was a first offender.
He deserves an appropriate sentence which is within the now
175 established range for first offenders.

In ***Aliganyira Richard Vs Uganda***, Court of Appeal Criminal Appeal No.
19 of 2005, the appellant was convicted of aggravated robbery and
sentenced to suffer death. On appeal, this Court reduced the sentence
to 15 years imprisonment.

180 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.

185 In ***Ogwal Nelson & 4 Ors v Uganda***, Court of Appeal Criminal Appeal No.
606 of 2015, this court reduced sentences of 35 years, 25 years, 30 years



and life imprisonment to a sentence of 17 years and 6 months imprisonment for the offence of aggravated robbery.

190 This court in *Mucunguzi Benon & Anor v Uganda, Court of Appeal at Mbarara Criminal Appeal No. 0008 of 2008*, confirmed a sentence of 15 years imprisonment for the offence of aggravated robbery.

In *Pte Kusemererwa & Anor v Uganda, Court of Appeal at Fort Portal Criminal Appeal No. 83 of 2010*, this court reduced a sentence of 20 years imprisonment to 13 and 12 years imprisonment for aggravated robbery in which 2 million shillings was stolen and was never recovered.

195 In *Asuman Abelle v Uganda, Supreme Court Criminal Appeal No. 66 of 2016*, the Supreme Court upheld a sentence of 18 years imprisonment for the offence of aggravated robbery.

200 In view of the above cited authorities and having taken into account all the aggravating and mitigating factors and the circumstances of this case, we now sentence the appellant to a term of 20 years imprisonment. We deduct the period of 2 years and 11 months he spent on remand. He will now serve a sentence of 17 years and 1 month imprisonment to run from 23/5/2003 when he was convicted. We so order.

205 Dated at Kampala this.....*24*.....day of *Aug*.....2019.



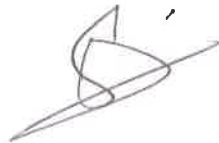
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210 **Elizabeth Musoke**
Justice of Appeal

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Hellen Obura
Justice of Appeal

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Ezekiel Muhanguzi
Justice of Appeal