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THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT JINJA

[CORAM: OWINY- DOLLO, DCJ; MUSOTA and TUHAISE, JJA]

CRIMINAL APPEAL No. 15 OF 2015

(Arising from the judgment of the High Court of Uganda at Jinja, (Bamugemereire, J.) in Criminal Session Case No. 158 of 2012)

OSUL MICHEAL APPELLANT

VERSUS

UGANDA RESPONDENT

JUDGMENT

20 Background

The appellant was indicted of aggravated robbery in contravention of section 285 & 286 (2) of the Penal Code Act. The facts of the indictment were that one Waiswa James, herein after referred to as the victim, was a boda-boda operator for hire based at Jinja Mpya Stage in Jinja Municipality. On 1st February 2012 the appellant hired the victim to transport the appellant to Butiki village in Mafubira Sub County for an agreed cost of U. shs 6000/= (six thousand only). Upon reaching an isolated place in a sugar cane plantation and pine forest, the victim felt something piercing him on the neck; and when he looked behind, he realised that the accused was holding a knife.

The victim then grabbed the knife; and they both fell off the motorcycle. The appellant over powered the victim after a brief struggle; and fled with the motorcycle. On 26th February 2016, the appellant was sighted along Lubas Road by boda-boda riders. They





arrested him and took him to Jinja CPS. He was later arraigned in Court, tried, and the Court convicted him as indicted.

Representation

The appellant was represented by Counsel Chris Munyamasoko on state brief, while the respondent was represented by Counsel Gladys Macrina, a Principal State Attorney.

Grounds of Appeal

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At the hearing of the Appeal, counsel for the appellant sought leave of Court to amend the Memorandum of Appeal to reflect one ground only; to wit that: 'the sentence of 24 years' imprisonment was harsh and manifestly excessive'. He urged this honorable Court to reduce the sentence to a reasonable sentence.

The case for the appellant

Counsel for the appellant submitted that the sentence of 24 years' imprisonment was harsh and manifestly excessive. Furthermore, he pointed out that the trial Court did not consider the period the appellant spent on remand before conviction. He referred Court to the case of *Rwabugande Moses vs Uganda SCCA No. 25 of 204*; where the Court held that any sentence that does not take the period the convict has spent on remand into consideration is illegal; and must be set aside. He then prayed that the sentence be reduced from 24 to 15 years.

Case for the Respondent

Counsel for the respondent conceded the point that the trial Court had not taken into account the period the appellant was on remand before conviction; as is clearly reflected in the record of the





sentencing proceedings. The trial Judge in this case considered the weapon used by the appellant during the commission of the crime, and the nature of the injuries sustained by the victim; but did not consider the period the appellant spent on remand. Counsel conceded that 24 years imprisonment was, in the circumstance of the offence, rather disproportionate; hence, she urged this Court to impose a sentence of 18 years instead.

Court's Consideration

It is trite that sentencing is a matter for the discretion of the trial Court that convicted the accused person. The appellate Court can only interfere with that discretion if it finds that the sentence imposed is manifestly excessive, or is so low as to occasion a miscarriage of justice. It can also interfere with the sentence where the trial Court ignores to consider an important matter or circumstance, which ought to be considered while passing the sentence; or where the sentence imposed is wrong in principle (See *Kiwalabye Bernard v Uganda; Criminal Appeal No.143 of 2001 (unreported)*. We agree that the sentence in this case is illegal since the learned trial judge did not comply with Article 23 (8) of the Constitution, which provides that the period the convicted person has spent on remand before conviction should be taken into account while imposing sentence. See *Rwabugande Moses Vs Uganda SCCA No. 25 of 204 (unreported)*.

We cannot ignore this illegality; and pursuant to the provision of section 34 (2) (b) of the Criminal Procedure Act, and section 11 of the Judicature Act, we set aside the sentence appealed against; and substitute for it a fresh sentence. The appellant is still young as he was only 20 years at the time he committed the offence. He is a first





time offender with no previous record. He had spent close to 3 (three) years on remand before conviction. It is necessary to impose a sentence that reflects the gravity of the offence for which he has been convicted; to wit, occasioning injuries to the victim, which could have been fatal. However, Court should take cognizance of the fact that being young, the appellant can still reform and be re-integrated into society where he could be quite useful. Second, the subject of the robbery was recovered and was presumably restored to the owner.

We are thus satisfied that in the circumstances of this case a sentence of 18 years imprisonment would serve as adequate punishment for the crime for which the appellant was convicted. However, after taking into consideration the period the appellant spent on remand prior to his conviction, we hereby and pursuant to the provisions of *Article 28 (3)* of the Constitution, impose a sentence of 15 (fifteen) years instead; which shall run from the date the appellant was convicted by the trial Court.

Alfonse C. Owiny - Dollo **Deputy Chief Justice**

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Stephen Musota

Justice of Appeal

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Percy Night Tuhaise

Justice of Appeal

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