

5 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
10 Macrina, a Principal State Attorney.

Grounds of Appeal

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
15 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
20 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.
25 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

5 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,
10 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
15 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
20 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
25 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
30 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

5 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
10 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
15 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
20 convicted by the trial Court.

Dated at Jinja this 4th day of Sept 2019



Alfonse C. Owiny - Dollo
Deputy Chief Justice



Stephen Musota
Justice of Appeal



Percy Night Tuhaise
Justice of Appeal

4/9/19. Appeller present. 4
No representative for DOP
Jech, Clem.

COA, subject delivered in the presence of the above.