THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT MASAKA

CRIMINAL APPEAL NO. 472 OF 2016

CORAM: (Cheborion Barishaki, Stephen Musota, Muzamiru M. Kibeedi, JJA)

SAIDI KABANDA::APPELLANT

VERSUS

UGANDA::RESPONDENT

(Appeal from the sentence of the High Court of Uganda at Masaka before Hon. Lady Justice Margaret Oguli Oumo dated 4th December, 2013 in Criminal Session Case No.128 of 2011)

JUDGMENT OF COURT

Introduction

The appellant herein was convicted of aggravated robbery contrary to sections 285 and 286(2) of the Penal Code Act on 4th December 2011 by, ***Margaret Oguli Oumo*** J at Masaka, and sentenced to 22 years imprisonment and pay 3,5000,000/= million to the complainant the cost of the stolen motorcycle.

The particulars of the offence are that Kabanda Saidi and others still at large on the 23rd day of October 2010 at Kinoni L.C.1 Bwesa Parish Lwabenge Sub County in Kyazanga District robbed a Motorcycle the

property of Kayongo Rajab and at or immediately after the said robbery used a deadly weapon to wit; a panga on the said Kayongo Rajab.

The facts giving rise to this appeal as set out in the record are that on the 23rd day of October 2010 at around 1:00am as Kayongo Rajab the complainant was sleeping in his house, it was broken into with a big stone and thugs entered with pangas. They threatened to kill him if he didn't give them money. They slapped him several times before tying him with other family members. The attackers robbed the complainant`s motorcycle Reg No. UDN 250S plus other house hold items.

The complainant and his family reported the matter to the LC1 chairman and later Lwebengo police. The following day A1 Semwanga reported to the LC1 chairman that he was also robbed of his petrol but when police inspected his home. They found that nothing had been robbed and he became a suspect. He was arrested and detained. On 25/10/2010 Kabanda Saidi was also arrested as a suspect and handed over to the police at Lwebengo. Upon interrogation by the police, he revealed that he committed the offence with one Kabonge Kassim. On 20th October 2010 Kabonge Kassim was arrested and he led the police to his 2nd home where the stolen properties were recovered i.e. Gomesi, mobile phone, wall clock, envelope containing a log book of the motorcycle and to where he had buried the number plate of the motorcycle. He informed the police how the motorcycle was sold to a Tanzanian national. All the accused were examined and found to be normal. The appellant was indicted, convicted and sentenced to 22

years imprisonment and ordered to pay Shs. 3.5 million to the complainant the cost of the stolen motorcycle.

Being dissatisfied with the learned trial Judge`s decision, the appellant lodged this appeal against both conviction and sentence on grounds framed thus;

1. ***That the trial Judge erred in law and in fact when she failed to properly evaluate the evidence on record and instead engaged in conjecture which occasioned a miscarriage of justice***
2. ***That the trial Judge erred in law and in fact when she sentenced the appellants to 22 years imprisonment and payment of 3,500,000/= million which was harsh and illegal thus occasioning a miscarriage of justice.***

At the hearing of the appeal, the appellant was represented by Lule Alexander on state brief while Nabisenke Vicky, Assistant Director of Public Prosecutions (DPP), appeared for the respondent. The appellant was in court via video link.

With leave of court, the notice of appeal and memorandum of appeal were validated having been filed out of time.

It was submitted for the appellant that court ignored the evidence on record and the grave inconsistencies in the prosecution`s case. That PW1, Kayongo Rajab and PW2, Nalugo Mariam`s testimony had inconsistencies regarding the time the robbery took place. That PW1 stated that it was around 1:00am on 23rd October yet PW2 stated that it was 22nd-23rd October. That the appellant in his unsworn testimony pleaded that on 23rd October 2010 he

had left kiganda in Masaka for Lwebengo taking ground nuts. Counsel contended that court down played the inconsistencies as to time yet it had a bearing to the question of the participation of the appellant and the alibi he advanced.

Counsel further submitted that the prosecution never placed the appellant at the scene of crime as his alibi was never disapproved. That the burden of proving its truth rested on the prosecution. He referred court to **Festo Androa Asenua & Another versus Uganda SCCA No. 1 of 1998.**

Counsel further submitted that without being clear on the day and time of commission of the offence, the prosecution could not discharge the legal burden of rebutting the alibi and therefore could not prove participation of the appellant and by ignoring the same, court occasioned a miscarriage of justice.

Counsel referred to **Obwalatumu versus Uganda SCCA No. 30 of 2015** for the proposition that where contradictions and discrepancies are grave, this would ordinarily lead to the rejection of the testimony.

It was also submitted for the appellant that the testimony relied on by court did not identify the appellant as the one who stole the motorcycle with others at large. That the prosecution evidence available points to one Kabonge and that the appellant`s arrest was a result of poor police investigation.

Counsel also submitted that the victim was victimized because he did not pay money to the complainant and to police. That this cast doubt as to whether the appellant committed the offence or that the police wanted to

have a sacrificial lamb after all the other suspects directly implicated by evidence on record had been released.

That allocutus was disregarded and the trial judge introduced mitigating factors that were never pleaded by the appellant. To counsel this pointed to the fact that the trial judge did not give evidence on record the attention it deserved and thus came to a wrong conclusion thus causing a miscarriage of justice.

On ground 2, Counsel for the appellant submitted that the trial judge only stated that the appellant was on remand for 3 years but did not clearly indicate whether she had considered the period while sentencing as mandated under Article 23(8) of the Constitution. That she left the deduction of the 3 years to those who could administer the sentence. He referred court to **Naturinda Tamson versus Uganda CACA No. 13/2011** for the proposition that the duty to deduct the period spend on remand belonged to the trial judge and not the prison authorities and that it was a misdirection that renders the sentence a nullity.

Counsel further submitted that the appellant was denied opportunity to mitigate the sentence as court disregarded the trial stage of allocutus and considered it as only being a ritual without significance. He contended that allocutus throws more light into matters that might remain hidden in the trial, reveals the appellants remorse or defiance and that the statements and remarks made by the judge during allocutus are often referred to by authorities when determining whether the convict should be considered for parole, remission of sentence or even prerogative of mercy and disregarding

this stage court was not able to consider and weigh mitigating factors thus exposed the appellant to a harsh sentence of 22 years imprisonment and compensation of 3,500,000/=. He submitted that the evidence of witnesses shows how the motorcycle disappeared and who took it to Tanzania and it was not the appellant. That making the appellant pay for what he did not take would be unjust.

Counsel invited court to rely on the principles of consistency and uniformity in sentencing the appellant as provided in the Constitution (Sentencing Guidelines for courts of Judicature (Practice) Directions 2013 since the trial judge did not consider them at all. He prayed that the sentence be reduced to 10 years.

In reply, Counsel for the respondent submitted that a careful review of the record reveals that the witnesses apart from PW1 narrated the events of the robbery to have taken place during the night of 23rd October 2010 at about 1:00am. That the slight discrepancy in PW1`s testimony where he refers to the night of 21-22 October was not a grave inconsistency because it did not go to the root of the case as the testimonies of other witnesses cured PW1`s minor contradiction. That where inconsistencies are minor, and do not go to the root of the case as it is in this case, the same ought to be disregarded basing on the decision in **Kato Kyambadde supra.**

Counsel further submitted that the appellant`s defence did not amount to an alibi for it lacked specificity about his whereabouts at the time of the robbery. That the appellant stated that on 23rd October 2010 when he reached Lwebengo (the village where the robbery took place), he heard about

the robbery that had taken place and although he said he was coming from Masaka, he did not indicate when he had gone there. That that did not rule out the possibility that he participated in the robbery that took place at 1:00pm at the Complainants home.

Counsel further submitted that the evidence given by the appellant to the police which led to the discovery of some of the stolen items, falls squarely under the provisions of S. 29 of the evidence Act and the recovery of the items at the appellant`s initiative is evidence that draws no other inference other than that of guilt on his part since it shows that he had knowledge that they had been stolen. That his knowledge of where they kept the items infers possession on his part as well as on the person who had physical possession and since the property was recovered within 48 hours after they had been robbed, then the principles of recent possession apply to the appellant. He referred court to section 2(v) of the Penal Code Act and **Izongasa William versus Uganda SCCA No. 6 of 1998** for the definition of possession.

Counsel further submitted that since the appellant was found in possession of recently stolen Property, he was culpable under the principle of common intention under section 20 of the Penal Code Act to the same extent as the person in whose home the stolen items were recovered because this was evidence of his participation in the robbery. That the learned trial judge properly evaluated the evidence on record and rightly found that the evidence against the appellant was circumstantial and was not capable of any explanation other than the guilt of the appellant.

On ground 2, It was submitted for the respondent that the record clearly showed that the learned trial judge considered and took into account the period of 3 years the appellant had spent on remand as required under article 23 (8) of the Constitution and referred to **Abelle Asuman versus Uganda SCCA No. 66 of 2016**.

Counsel further submitted that the supplementary record of proceedings which were later availed by court showed that the allocutus stage was conducted wherein the appellant`s counsel submitted that he was the 1st offender, aged 42 years, remorseful, had spent 3 years on remand, sole bread winner and had learnt a lot while in prison.

Counsel submitted that aggravated robbery carries a maximum sentence of death and that paragraph 31 sets out the factors that aggravate the sentence of robbery which factors existed in this case; they robbed motorcycle, the appellants attack of the complainant with a panga, knife, sticks while beating and threatening them to death, demand for and robbery of the motorcycle which was never recovered, clothing, documents and phone. That the sentencing range after taking into account both aggravating and mitigating factors is 30 years and the appellant was sentenced to 22 years which was within the range.

That in lieu of the uniformity principle, and since the period of 3 years the appellant had spent on remand was taken into account the sentence of 22 years was consistent with sentences set by this court for cases of aggravated robbery and it was neither harsh nor excessive.

Regarding an order of compensation of Shs. 3,500,000/=, counsel submitted that the learned trial judge rightly exercised her discretion by ordering the appellant to pay compensation to the victim of his crime which discretion is provided for in section S. 126 of the Trial on Indictment Act. He prayed the appeal be dismissed conviction upheld and sentence of 22 years passed by the learned trial judge be confirmed.

We have carefully considered the submissions of both counsel and carefully perused the Court record. We are alive to the law that requires us as the first appellate Court to re-appraise all the evidence and to come up with our own inferences. ***See 30(1) of the Rules of this Court and Bogere Moses V Uganda, Supreme Court Criminal Appeal No.1 of 1997, Kifamunte Henry versus Uganda SCCA No. 10 of 1997.***

On ground 1, the learned trial judge is faulted for having failed to evaluate evidence regarding the date and the time when the robbery took place. That had the learned trial judge properly evaluated the evidence on record he would have found that the prosecution`s testimonies regarding the date and time of robbery had grave inconsistencies and once coupled with the defence alibi which the prosecution did not disprove, the learned trial judge should have come to the conclusion that the appellant did not participate in the robbery.

We note that the evidence of the prosecution was circumstantial as no one saw the appellant committing the offence. Be that as it may, the law governing circumstantial evidence is well settled.

In order to justify an inference of guilt, based on circumstantial evidence, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis other than that of his guilt. **See Andrea Obonyo and Others versus R, (1962) E.A. 542**

Ssekandi J.A (as he then was) in his lead judgment in ***Amuse Dhatemwa Alias Waibi vs Uganda; Court of Appeal Criminal Appeal No. 23 of 1977,*** had this to say on circumstantial evidence;

> *"It is true to say that circumstantial evidence is very often the best evidence. It is evidence of surrounding circumstances which, by undersigned coincidence is capable of proving facts in issue accurately; it is no derogation of evidence to say that it is circumstantial, See: R vrs Tailor, Wever and Donovan, 21 Criminal Appeal R 20. However, it is trite law that circumstantial evidence must always be narrowly examined, only because evidence of this kind may be fabricated to cast suspicion on another. It is, therefore necessary before drawing the inference of the accused guilt from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference. See: Teper vrs P.(1952) A.C 480 at p 489 See also: Simon Musoke vrs R (1958) E.A 715, cited with approval in Yowana Serwadda vrs Uganda Cr. Appl. No. 11 of 1977 (U.C.A).*

The burden of proof in criminal cases is always upon the prosecution and a case based on a chain of circumstantial evidence is only as strong as its weakest link."

The Supreme Court reaffirmed the above position of the law in ***Janet Mureeba and 2 others-vs Uganda; Supreme Court Criminal Appeal No. 13 of 2003*** in the following words:

"There are many decided cases which set out tests to be applied in relying on circumstantial evidence. Generally, in a criminal case, for circumstantial evidence to sustain a conviction, the circumstantial evidence must point irresistibly to the guilt of the accused. In R -vs- Kipkering Arap Koske and Another [1949] 16 EACA 135 it was stated that in order to justify, on circumstantial evidence, the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of guilt. That statement of the law was approved by the E.A Court of Appeal in Simon Musoke vs R [1958] EA 715."

In ***Bogere Charles vs Uganda; Supreme Court Criminal Appeal No. 10 of 1998***, the Supreme Court referred to a passage in Taylor on Evidence 11th Edition page 74 which states;

"The circumstances must be such as to produce moral certainty to the exclusion of every reasonable doubt."

The court is required to exercise caution when dealing with circumstantial evidence. In **Teper vs R (2) [1952] AC 480** the court held that before drawing an inference of the accused's guilt from circumstantial evidence, the court has to be certain that there are no other co-existing circumstances which would weaken or destroy that inference.

PW1, Kayongo Rajab testified that the robbery happened on the night of 21-22 October at around 1:00am.

PW2, Nalugo Mariam testified during her examination in chief that the robbery occurred on 22-23 October at about 1:00 am. It was PW3 Corporal Byamugisha Erasmus who testified that when the complainant reported the robbery to police, he stated that it occurred on 22nd October 2021. PW4 Sebaliba Elias stated that he was called by the LC Chairman in the night of 23 October 2010 at around 3:00am and told him that his brother's things including the motorcycle had been stolen.

The law is now well settled that inconsistencies or contradictions in the prosecution evidence which are major and go to the root of the case must be resolved in favour of the accused. However, where the inconsistencies or contradictions are minor they should be ignored if they do not affect the main substance of the prosecution's case, save where there is a perception that they were deliberate untruths. See ***Alfred Tajar vs. Uganda Eaca Criminal Appeal NO. 167 OF 1969*** *and* ***Sarapio Tinkamalirwe vs. Uganda Supr. Court Criminal Appeal NO. 27 OF 1989***.

What can be discerned from the record is that the robbery occurred in the night of 23rd at 1:00am and even if some prosecution witnesses referred to the 22nd in our view this is a minor inconsistency resulting from the fact that the robbery occurred one hour after the entering into the new day and date. The inconsistency herein was minor and did not go to the root of the prosecution`s case.

On the Defence of Alibi, It was submitted for the appellant that the learned trial judge down played the inconsistency as to time and yet it had a bearing on participation and alibi and that by disregarding the issue of time, the alibi raised by the appellant at the trial was never disapproved by the prosecution.

The appellant testified that on 23rd October 2010 he left Kiganda in Masaka for Lwebengo taking ground nuts. That when he reached Lwebengo at about 12 am, he heard that they stole Kayongo`s properties.

Clearly, the appellant`s alibi lacked specificity about his way about at the time of the robbery that took place at about 1:00am an hour after the appellant`s arrival in Lwebengo. Having already determined the fact that the robbery happened on 23rd October 2021, we will proceed to evaluate the evidence and ascertain whether the appellant could have participated in the robbery that happened at 1:00 am.

PW3, Corporal Byamugisha Erasmus testified that he was informed that on the night the robbery took place, a one Semwanga was seen with a stranger in the area heading to where Kabanda was residing. This was corroborated by PW4, Sebaliba Elias who testified that after they arrested one Semwanga,

residents said that they usually see him with Kabanda and other people they do not know. PW3 further testified that they decided to look for the appellant whom they had seen run away to the bush and they later found his motorcycle abandoned. That he was later arrested by the people.

PW1, Kayongo Rajab, PW3 Corporal Byamugisha Erasmus and PW4, Sebaliba Elias stated in their evidence that once the appellant was arrested, he admitted that he knew why he was being arrested and he corporated to wit; he led them to the home of Kassim Kabonge were the stolen items were recovered and once he knocked on Kassim`s door at 3:00am, he asked the appellant whether he had another deal, the appellant said yes and Kabonge immediately opened.

During his cross examination, PW3, Corporal Byamugisha Erasmus testified that it was the appellant who took them to Kabonge Kassim`s home where some of the stolen items were recovered. That Kabonge admitted having committed the robbery together with the appellant. This further corroborates the evidence of PW1 Kayongo Rajab and PW2 Nalugo Mariam that their attackers were a group of men.

From the forgoing evidence on record adduced by the prosecution, it's clear that it negates the appellant`s alibi, speaks a lot to his participation in the robbery. He tried to run away when he heard that police was looking for him.

The Supreme Court in the case of ***Remegious Kiwanuka vs Uganda Criminal Appeal No. 41 of 1995***, observed that the disappearance of an

accused person from the area of a crime soon after the incident may provide corroboration to other evidence that he has committed the offence. This is because such sudden disappearance from the area is incompatible with innocence of such a person.

This act is not one for an innocent person. Further, on his arrest he told the police that he knew why he was being arrested to wit; he led the police to Kabonge`s home where some of the stolen items where hidden.

In ***Walugembe Henry and 2 others versus Uganda SCCA No. 39 OF 2003***, the appellants were indicted and convicted by the High Court of Uganda on three counts of robbery contrary to sections 272 and 273(2) PCA. They were each sentenced on every count to suffer death, but the sentences on the second and third counts were suspended. Their appeals to the Court of Appeal were dismissed and they appealed to the Supreme Court, one ground being that the circumstantial evidence against any of the appellants was inconclusive and thus, they denied participating in the robbery, and possessing the stolen property. The Supreme Court held that when the police intercepted the 2nd and 3rd appellants, they were both on a mission to collect those articles, which leads to an irresistible inference that both participated in hiding the articles in the swamp and held that the property was in their constructive possession.

This evidence points to no other direction but to the appellant`s participation in the robbery and his guilt. He told police he had other suspects in Bukomansimbi, very well knew where they had hidden the

stolen properties and what happened to the complainant's motorcycle. It placed him squarely at the scene of the robbery that took place at 1:00am.

Section 20 of the Penal Code Act on Joint offenders in prosecution of common purpose provides that;

When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of that purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of that purpose, each of them is deemed to have committed the offence.

In our view, these circumstances are incapable of any other explanation other than that of the appellant`s guilt. We find that the appellant was alive to the fact that he had committed the robbery that's why he tried to run away, he specifically took police to the place where the stolen items were hidden, a one Semwanga admitted that he committed the robbery with the appellant, he went with police to help it trace the motorcycle they had sold at Mutukula which is proof of participation in the commission of the offence.

We find that the learned trial Judge rightly evaluated and relied on the evidence adduced by both the prosecution and the defence and came to a conclusion she came to. We find no reason for faulting her in deciding the way she did.

Ground one fails

On ground 2, the learned trial judge was faulted for not taking into account the appellant`s period of 3 years he had spent on remand, not conducting a

sentencing hearing/allocutus, and not relying on the principle of uniformity in sentencing thus meting out a harsh and illegal sentence of 22 years imprisonment, an order of compensation of 3, 5000, 000/= thus occasioning a miscarriage of justice.

In exercising its jurisdiction to review sentences, an appellate Court does not alter a sentence on the mere ground that if the members of the appellate Court had been trying the appellant they might have passed a somewhat different sentence. An appellate Court will not ordinarily interfere with the discretion exercised by a trial Judge unless it is evident that the Judge has acted upon some wrong principle or over-looked some material factor or that the sentence is harsh and manifestly excessive in view of the circumstances of the case. See ***Kizito Senkula V Uganda, Supreme Court Criminal Appeal No.24 of 2001, Abaasa Johnson & Another versus Uganda*** *Supra* ***Kiwalabye Bernard V Uganda Supra,***

Regarding the alleged illegality of the sentence for failure to comply with the constitutional requirement on period spent on remand, ***Article 23(8)*** *of the Constitution provides:-*

> *"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."*

This provision is clear that where a person is sentenced to a term of imprisonment, the trial court must take into account the period the convict spent on remand

Abelle Asuman versus Uganda *Supra, the Supreme Court while revisiting the decision in* **Rwabungande Moses versus Uganda SCCA No.25 of 2014** *stated as follows;*

> *"The Constitution provides that the sentencing Court must take into account the period spent on remand. It does not provide that the taking into account has to be done in an arithmetical way. The constitutional command in Article 23(8) of the Constitution is for the Court to take into account the period spent on remand.....*
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> *What is material in that decision is that the period spent in lawful custody prior to the trial and sentencing of a convict must be taken into account and according to the case of Rwabugande that remand period should be credited to a convict when he is sentenced to a term of imprisonment. This Court used the words to deduct and in an arithmetical way as a guide for the sentencing Courts but those metaphors are not derived from the Constitution.*
>
> *Where a sentencing Court has clearly demonstrated that it has taken into account the period spent on remand to the credit of the convict, the sentence would not be interfered with by the appellate Court only because the sentencing Judge or Justices used different words in their judgment or missed to state that they deducted the period spent on remand. These may be issues of style for which a lower Court would not be faulted when in effect the Court has complied with the Constitutional obligation in Article 23(8) of the Constitution."*

While sentencing the appellant, the learned trial Judge stated as follows;

"The accused doesn't appear remorseful as he claimed that his allege motorcycle should be returned to his family, to cater for his upkeep, no evidence was adduced to court as to whether he lost a motorcycle and the circumstances under which he lost it. He has been on remand for 3 years....Consequently the convict is sentenced to 22 years imprisonment and to pay 3.5 million shillings to the complainant, the cost of his stolen moto cycle"

It is clear from the record that the judge while sentencing the appellant was alive to the fact that he had spent 3 years on remand and she went ahead to take the same in account before she meted out a sentence of 22 years imprisonment. She complied with the requirement of Article 23(8) of the Constitution.

After scrutinizing the evidence on record, the supplementary proceedings show that the learned trial judge conducted allocutus sentencing hearing. Where both parties submitted on the aggravating and mitigating factors.

The prosecution submitted that; the offence committed attracts a maximum sentence of death, appellants actions were awful and deprived the complainant of his constitutional right to property because the motorcycle was not recovered, appellant not remorseful, offence is rampant and they prayed for a deterrent sentence and compensation to the complainant. Counsel for the appellant submitted in mitigation that; he is a 1st offender, aged 42 years, remorseful, spent 3 years on remand, sole bread winner, learnt a lot from prison and prayed for leniency.

Clearly, the learned trial judge conducted the sentencing hearing and he thereafter took into consideration both the aggravating and mitigating factors before sentencing the appellant. The appellant`s contention in this regard seems to have arisen out of the record of proceedings were the sentencing hearing had been omitted. However, a supplementary record of proceedings was availed by court which showed that the sentencing hearing had been conducted. We find that the assertion by the appellant that the learned trial judge disregarded the trial stage of allocutus unsubstantiated and not true.

The maximum sentence for the offence of aggravated robbery is death. Indeed the sentencing range in schedule 3 of the **Constitution (Sentencing Guidelines for courts of Judicature (Practice) Directions 2013** after taking into account all aggravating and mitigating factors from 30 years up to death.

Paragraph 31 of the same guide lines provides that;

In considering imposing a sentence for robbery, the court shall be guided by the following aggravating factors—

(a) degree of injury or harm;

(b) the part of the victim's body where harm or injury was occasioned;

(c) whether there was repeated injury or harm to the victim;

(d) use and nature of the weapon;

(e) whether the offender deliberately caused loss of life in the course of the commission of the robbery;

(f) whether the offender deliberately targeted or caused death of a vulnerable victim;

(g) whether the offender was part of a group or gang and the role of the offender in the group, gang or commission of the crime;

(h) whether the offence was motivated by, or demonstrates hostility based on the victim's age, gender, disability or such other discriminating characteristics;

(i) the nature of the deadly weapon used during the commission of the offence;

(j) the gratuitous nature of violence against the victim including multiple incidents of harm or injury;

(k) the manner in which death occurred during the commission of the offence;

(l) the value of the property or amount of money taken during the commission of the offence;

(m) commission of other criminal acts such as rape or assault;

(n) whether the offence was committed as part of a pre-meditated, planned or concerted act and the degree of pre-meditation;

(o) the rampant nature of the offence in the area or community;

(p) whether the offence was committed in the presence of other persons such as children, a spouse of victim or relatives;

(q) whether the offender is a habitual offender;

(r) whether the offence was committed while under the influence of alcohol or drugs;

(s) whether the offender is remorseful;

(t) previous incidents of violence or threats to the victim by the offender;

(u) evidence of impact on the victim's family, relatives or the community; or

(v) any other factor as the court may consider relevant

We find that most of the above aforementioned factors existed in this case; the complainant`s valuable properties were lost to wit; a motorcycle, clothes and the phone, the appellant and 3 others attacked the complainant with a panga knife and sticks, beat and threatened to cut them and kill them, demanded for motorcycle log book, the motorcycle, clothing and his phone and wells other items were recovered, the motorcycle was never recovered.

The Supreme Court has in **Mbunya Godfrey V Uganda, Supreme Court Criminal Appeal No.4 of 2011,** emphasized the need to maintain consistency while sentencing persons convicted of similar offences. Court stated that *"We are alive to the fact that no two crimes are identical. However, we should try as much as possible to have consistency in sentencing."*

In earlier decisions of this court while passing sentence on aggravated robbery show the following trend;

In Kigozi living stone and another versus Uganda CACA No. 365 of 2016 the court stated that with regards to aggravated Robbery, the tendency of the court has been a term of imprisonment ranging from 12-25 years.

In **Ogwal Nelson and 4 others vs Uganda CACA NO. 606 of 2015** Court reduced sentences of 35 years, 25 years, 30 years and life imprisonment to a sentence of 17 years and 6 months for the offence of aggravated robbery.

In Olupot Sharif & Anor versus Uganda, CACA No. 0730 of 2014 where the appellant had been convicted of aggravated robbery and sentenced to 40 years, on appeal the sentence was reduced to 32 years.

In Soave Sedu Tonny versus Uganda CACA600/2014 the appellant was sentenced to a term of 21 years and 7 months for the offence of aggravated robbery. On appeal, he was sentenced to 20 years imprisonment.

In **Rutabingwa James V Uganda, Court of Appeal Criminal Appeal No.57 of 2011,** this Court confirmed a sentence of 18 years for aggravated robbery.

In view of the above cited cases and having taken into account all the aggravating and mitigating factors, we main the sentence of 22 years that the learned trial judge meted out against the appellant. We find no reason to fault her in deciding the way she did. We find a sentence of 22 years imprisonment not harsh and excessive in the circumstances of the case. It squarely falls within the sentencing range of similar offences of aggravated robbery.

Regarding the Order on Compensation, **Section 126 (1) of the Trial on Indictment cap 23** provides;

> *"When any accused person is convicted by the High Court of any offence and it appears from the evidence that some other person,*

whether or not he or she is the prosecutor or a witness in the case, has suffered material loss or personal injury in consequence of the offence committed, the court may, in its discretion and in addition to any other lawful punishment, order the convicted person to pay to that other person such compensation as the court deems fair and reasonable."

During the robbery valuable properties were stolen to wit; clothing, a phone, a motorcycle and its log book. Fortunately, some of the properties were recovered except the Motorcycle as it had already been sold and taken through Mutukula to Tanzania. The stolen Motorcycle was valued at 3,500,000/=. It was just and fair in the circumstance for the complainant to be compensated for the value of his motorcycle. The learned trial judge judiciously exercised her discretion in ordering the appellant to pay 3,500,000/= to the victim as compensation for the value of his stolen motorcycle. We find no reason to fault her in deciding the way she did.

In the result we find no ground to alter the sentences handed down by the learned trial judge. We maintain the sentence of 22 years imprisonment and an order of compensation of 3,500,000/= imposed upon the appellant by the learned trial Judge on 4th December 2013, the date of conviction. We dismiss this appeal and uphold the sentence and orders passed by the High Court.

We so order.

Dated this.....15th.....day of.....Oct.....2021

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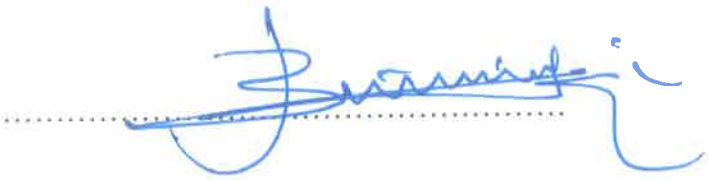

Cheborion Barishaki

Justice of Appeal

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Stephen Musota

Justice of Appeal

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Muzamiru Mutangula Kibeedi

Justice of Appeal