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THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CRIMINAL APPEAL NO. 0019 OF 2012



TAMALE RICHARD APPELLANT

VERSUS

10 UGANDA RESPONDENT

(Appeal from the decision of the High Court of Uganda at Kampala before Hon. Lady Justice Monica K. Mugenyi, J dated 15th December, 2011 in Criminal Session Case No.0178 of 2011)

15 CORAM: Hon. Mr. Justice Kenneth Kakuru, JA
Hon. Mr. Justice Muzamiru Mutangula Kibeedi, JA
Hon. Lady Justice Irene Mulyagonja, JA

JUDGMENT OF THE COURT

20 This appeal arises from the decision of the High Court in HCT-00 CR-SC-0178 of 2011 by *Hon. Lady Monica K. Mugenyi, J* (as she then was) at Kampala dated the 15th day of December, 2011 in which the appellant was convicted of Aggravated Robbery contrary to *Sections 285 and 286(2)* of the Penal Code Act (CAP) 120 and sentenced to 25 years imprisonment.

25 **Brief facts**

At the trial, it was the prosecution's case that, the appellant and others still at large attacked the victims (wife and husband) at their home at Kakinzi village, Luwero District. Further that, the appellant raped the woman together with others still at large and immediately before or after used a deadly weapon. The appellant and

5 other still at large robbed the victims a bicycle, Ug. Shs 43,000/= and a mobile
phone. The appellant was arrested and was indicted with the offence of rape
contrary to Sections 123 and 124 and aggravated robbery Contrary to Sections 285
and 286(2) of the Penal Code Act (CAP) 120. He pleaded not guilty to the charges.
After a full trial the appellant was convicted of the offence of Aggravated Robbery
10 and sentenced to 25 years imprisonment. He was however acquitted of the offence
of rape.

The appellant with leave of this Court appeals against sentence only. The sole
ground of appeal is set out as follows:-

1. *The learned trial Judge erred in law and in fact when he subjected the appellant*
15 *to a sentence that was harsh and manifestly excessive in the circumstances of*
the case.

Representations

At the hearing of this appeal, *Mr. Ian Derrick Mutange* learned Counsel appeared for
the appellant on state brief while *Ms. Caroline Nabaasa* learned Senior Assistant
20 Director of Public Prosecutions appeared for the respondent. The appellant was not
in Court physically, but followed proceedings *via* video link to prison due to COVID-
19 Pandemic restrictions. Upon the direction of the Court, parties proceeded by way
of written submissions. The submissions were on record at the time of the hearing.
Counsel for the parties each addressed Court very briefly.

25 **Appellant's case**

Mr. Mutange, Counsel for the appellant, submitted that, the sentence of 25 years
imprisonment for the offence of aggravated robbery was harsh and manifestly
excessive in the circumstances of the case.

5 He contended that, there were a number of mitigating factors in favour of the appellant. He was a first offender. He was relatively young aged 20 years at the time of the commission of the offence. He had spent 1 year and 9 months in pre-trial detention and he was remorseful.

10 He asked Court to reduce the sentence to 15 years imprisonment taking into consideration the principle of uniformity and consistency in sentencing which requires that offenders convicted of the same offence in similar circumstances be given uniform sentences. For the above proposition, he referred us to *Okute Sam vs Uganda, Court of Appeal Criminal Appeal No. 251 of 2002*, *Adama Jino vs Uganda Court of Appeal Criminal Appeal No. 50 of 2006*, and *Kusemererwa & Another vs*
15 *Uganda Court of Appeal Criminal Appeal No 83 of 2010*.

The Respondent's reply

Ms. Nabaasa learned Senior Assistant Director of Public Prosecutions opposed the appeal and supported the sentence. She contended that, the learned Judge before imposing the sentence considered all the mitigating and aggravating factors and
20 imposed an appropriate sentence in the circumstances of this case. She argued that, the sentence of 25 years was lenient considering the fact that, the maximum sentence is the death penalty.

She asked Court to dismiss the appeal and uphold the sentence.

Resolution of the Appeal

25 We have carefully listened to the submissions of both Counsel. We have also 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 before Court and make our own inferences on all issues of law and fact. See: *Rule 30(1)* of the Rules of this Court, *Kifamunte Henry vs Uganda, Supreme Court*

5 *Criminal Appeal No. 10 of 1997 and Bogere Moses vs Uganda, Supreme Court Criminal Appeal No. 1 of 1997.*

It is the appellant's contention that, the sentence of 25 years imprisonment imposed against him for the offence of aggravated robbery was harsh and manifestly excessive in the circumstances of the case. It was also contended that, the learned
10 trial Judge ignored the principle of uniformity and consistency of sentencing and as such she passed a sentence that was not in range with the sentences imposed by this Court and the Supreme Court in cases in similar facts.

As an appellate Court, we are constrained in the exercise of the powers we have to interfere with sentence handed down by a trial Court. The principle upon which the
15 1st appellate Court may interfere with a sentence of the trial Court was laid down in *Ogalo s/o of Owoura vs R. (1954) 21 E.A.C.A 270* and *James vs R (1950) E.A.C.A*. It has been followed since. The principle is that the Court does not alter a sentence on the mere ground that if the members of the court had been trying the appellant they might have passed a somewhat different sentence. The appellate court will not
20 ordinarily interfere with the discretion exercised by the lower court unless it is evident that the lower court has acted upon some wrong principle or overlooked some material factor, or the sentence is manifestly excessive in view of the circumstances of the case.

See also: *Livingstone Kakooza Vs Uganda, Supreme Court Criminal Appeal No. 17 of*
25 *1993* and *Kiwalabye Bernard Vs Uganda, Court of Appeal Criminal Appeal No. 143 of 2001.*

The appellant in this appeal deliberately committed a very serious offence of robbery and used deadly weapons, to wit sticks in the commission of the offence. This is a serious aggravating factor.

5 However, the appellant was a youth aged 18 years at the time of the commission of the offence. He was a first offender as there is nothing on record to show otherwise. He had been on remand for 1 year and 9 months. He deserves leniency on account of his age. He had just turned into an adult.

10 These factors were considered by the trial Judge. The only principle that appears not to have been taken into account by the learned trial Judge is that of consistency and uniformity of sentences. It is the principle of uniformity that sets a bench mark for what amounts to a harsh and excessive sentence. The judicial precedents show that sentences for aggravated robbery range from 10 years to 20 years imprisonment.

15 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.

In *Muchungunzi Benon & Another vs Uganda, Court of Appeal Criminal Appeal No. 0008 of 2008*, this Court upheld a sentence of 15 years imprisonment for the offence of aggravated robbery.

20 In *Tumusiime Obed & Another vs Uganda, Court of Appeal Criminal Appeal No. 149 of 2010*, the appellant was convicted of aggravated robbery and sentenced to 16 years imprisonment. On appeal to this Court, it was reduced to 14 years.

25 In *Amandu Alex vs Uganda, Court of Appeal Criminal Appeal No. 0153 of 2014*, the appellant was convicted of aggravated robbery and sentenced to 30 years imprisonment. On appeal to this Court, it was reduced to 10 years.

In *Twinomujuni Baala vs Uganda, Court of Appeal Criminal Appeal No. 024 of 2011*, the appellant who was 20 years old at the time of the commission of the offence was convicted of aggravated robbery and sentenced to 20 years imprisonment. On appeal to this Court, the sentence was reduced to 13 years imprisonment.

5 Taking into account all the aggravating and mitigating factors of this case and the
decisions of this Court and the Supreme Court cited above and those not cited, we
consider that a term of 18 years imprisonment will meet the ends of justice. We now
take into account the 1 year and 9 months the period the appellant spent in pre-trial
detention and order that he serves a sentence of 16 years and 3 months
10 imprisonment commencing from the 15th day of December, 2011 the date he was
convicted.

We so order.

Dated at Kampala this.....6th.....day ofMay..... 2021.

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Kenneth Kakuru
JUSTICE OF APPEAL

Muzamiru Mutangula Kibeedi
JUSTICE OF APPEAL

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Irene Mulyagonja
JUSTICE OF APPEAL