THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT MBARARA

CRIMINAL APPEAL NO. 176 OF 2013

(Coram: Egonda-Ntende, Bamugemereire & Madrama, JJA)

TWESIGYE ROBERT} ..... APPELLANT

VERSUS

UGANDA} ..... RESPONDENT

(Appeal from the decision of the High Court of Uganda at Rukunkiri in Criminal Session Case No 20 of 2013 before Murangira, J delivered on 6th December, 2013)

JUDGMENT OF COURT

The Appellant and Ampwera Julius Karuma were indicted for the offence of Murder contrary to section 188 and 189 of the Penal Code Act, Cap. 120 laws of Uganda and Aggravated Robbery contrary to section 285 and 286(2) of the PENAL Code Act.

It was alleged that the Appellant and Ampwera Julius Karuma on 12th November, 2009 at Katojo Trading Centre in Kanungu District murdered Bimbona Alex and robbed him of money, shop items and 6 mobile phones. They shot the deceased who died instantly and wounded the deceased's nephew who managed to escape with injuries. The incident was reported to the police who arrested the Appellant and paraded him with others in an identification parade. The deceased's widow identified the Appellant as the assailant.

The Appellant was tried and convicted on both counts as indicted while A2, Ampwera Julius Karuma, was acquitted and set free.

Upon conviction the Appellant was sentenced to 60 years' imprisonment on count one and 15 years' imprisonment on count two. Both sentences were set to run concurrently.

The Appellant was dissatisfied with the decision of the High Court, and appealed against his conviction and sentence on the following grounds:

1. The learned trial Judge erred in law and fact to convict the Appellant of the offence of murder when the ingredient of participation had not been proved.

2. The learned trial Judge erred in law and fact to convict the Appellant of the offence of Aggravated Robbery when the ingredient of theft had not been proved.

3. The learned trial Judge erred in law and fact to sentence the Appellant to (an) illegal sentences of 60 years' imprisonment and 15 years' imprisonment without considering the period spent on remand.

4. The learned trial Judge erred in fact to sentence the Appellant to 60 years' imprisonment which was a harsh sentence.

The Appellant prays for the appeal to be allowed so that his conviction is set aside or in the alternative, the sentence of 60 years' imprisonment for murder is set aside and an appropriate sentence imposed.

Representation

At the hearing of the appeal, learned counsel Ms Kentaro Specioza on state brief represented the appellant while learned counsel Mr. Oola Sam, Senior Assistant Director of Public Prosecutions represented the respondent. The appellant appeared via video link from Mbarara Main Prison. With leave, the counsel of the parties addressed court in written submissions and judgment was reserved on notice.

Submissions of Counsel

1. **The learned trial Judge erred in law and fact to convict the Appellant of the offence of murder when the ingredient of participation had not been proved.**

The appellants counsel submitted that according to prosecution evidence, PW1 Kyarikunda Ruth was at the scene when the offences were committed. She testified that before the incident she had never seen the assailants in the village. According to her, the thieves entered the house

when she was in the bedroom. The accused had torches and when they could flash, they would flash in her face. Counsel contended that when a flash is directed at the face, it is hard to see the person who flashed. PW1 stated that there was no bulb in the bedroom and therefore she relied on the flashlight to identify the assailants. Counsel submitted that it was not possible for PW1 to identify the assailants using only the flashlight.

Further PW1 testified that she identified the two accused persons because they were the ones hitting her with sticks and are kept raising her eyes and looking at them. However, there was no light in the room and the flashlight was flashing in the witnesses face and there was no way she could have properly identified the assailants. Counsel contended that if the witness never identified the accused properly during the commission of the offence, then the identification at the police was mere guesswork. In the premises, the appellant's counsel submitted that the surrounding circumstances did not allow for proper identification of the appellant and ground 1 of the appeal ought to succeed.

In reply to ground 1, the respondents counsel admitted that PW1 was a single identifying witness. On the law regarding identification, the respondents counsel relied on **Bogere Moses and Another v Uganda; Supreme Court Criminal Appeal No 1 of 1997** for the principles applicable in dealing with the evidence of identification by eyewitnesses in criminal matters. These principles are that (1) the court ought to satisfy itself from the evidence whether conditions under which the identification was claimed to have been made were not difficult and caution itself on the possibility of mistaken identity. (2) the court should proceed to evaluate the evidence cautiously so that it does not convict or uphold the conviction, unless it is satisfied that mistaken identity is ruled out. (3) the court must consider the evidence as a whole, namely the evidence, if any, of factors favouring correct identification together with those rendering it difficult. (4) the evidence should be weighed in relation to the rest of the evidence.

The respondent's counsel submitted that the learned trial judge was alive to the law on identification and particularly by a single identifying witness in his analysis of the testimony of PW1. He agreed with the analysis and stated that there was no evidence that torches were flashed in the face

of PW1 for the entire duration of the incident. In fact, PW1 kept raising her eyes at her assailants and in cross examination gave the conditions of the identification which was that there was no light in the house but the assailants had torches. She first identified A1 when she was coming from the bedroom, the robbers shot the deceased and he fell down in her bedroom. She was terrified by the shooting and she could see the accused persons very well. The robbery and all the scuffle took about 30 minutes and even when she was looking for the monies they were demanding she saw them very well that night.

The respondents counsel contended that the appellant's counsel only selectively picked pieces of evidence to argue that PW1 did not properly identify the assailants. He submitted that the evidence should be considered as a whole. In addition, he submitted that PW1 identified the appellant at an identification parade organised by PW 6. There was nothing in the evidence of PW1 and PW6 to show that the identification of the appellant was through guesswork. PW1 was emphatic that she saw the appellant at the scene and could identify him if she met him anywhere. The evidence of PW6 is corroborated by the evidence of PW1 to the effect that she identified the appellant at the identification parade. Further exhibit P EX 3 which is the identification parade report corroborates the evidence of PW1. He submitted that there was ample evidence to prove identification of the appellant at the scene as the participant in the murder of the deceased. In the premises the respondents counsel submitted that the trial judge cannot be faulted on the question of identification of the appellant and ground one of the appeal ought to fail.

2. The learned trial Judge erred in law and fact to convict the Appellant of the offence of Aggravated Robbery when the ingredient of theft had not been proved.

The appellants counsel submitted that PW1 testified that she gave the assailants shillings 600,000/= and that the appellants further stole 5 mobile phones. Further the witness testified that she was told by the police at Kanungu that there were some people who were arrested with their phones and that the documents concerning the phones were given to the police to trace the phones. The appellants counsel submitted that

it was not surprising that no recovered phones were tendered in court as an exhibit. Secondly the alleged documents concerning the funds were not tendered in court.

Further the appellants counsel submitted that PW1 testified that they had never recovered any of the stolen properties. She contended that if the police recovered the phones, the alleged phones were never handed back to the owners and were not tendered in court, neither were their documents tendered in court, then where does the prosecution derive proof that the phones were actually stolen?

The appellants counsel further argued that there is no evidence on record to prove that money was actually stolen. PW1 further stated that she gave the robbers shillings 600,000/=. In cross examination, she testified that she just picked the money and gave it to the robbers and she had not counted it.

Further, PW1 testified that the robbers stole 7 crates of beer, 5 boxes of the chief waragi, 3 boxes of coffee and a suitcase of clothes. On the other hand, PW2 Mr Byaruhanga Kenneth testified that on the following day, the recovered clothes and some papers and some sachets of a chief waragi. Counsel submitted that the alleged recovered items were not tendered in court as exhibits and there is no sufficient evidence before court to prove that they are was any theft. She prayed that ground 2 of the appeal also succeeds.

In reply, on the question of whether the ingredient of theft had been proved, the respondents counsel submitted that at the trial, counsel for the appellant rightly conceded that the prosecution had proved theft of property of the complainant or the deceased. The trial judge correctly found at page 5 of the judgment that PW1 gave detailed account of how the offences were committed. She enumerated the properties that were stolen. She concluded her evidence in chief by saying that she had not recovered any of the stolen properties and the evidence on record is clear. Further, the respondents counsel submitted that the evidence of PW1 concerning the stolen properties was not controverted. He submitted that even if any of the stolen properties had been recovered and not produced in court as exhibits, such omission would not be fatal to the prosecution case. The available evidence was more than sufficient to prove the ingredient of theft of the property of Bimbona Alex. In the

premises he prayed that we find ground 2 of the appeal devoid of merit and dismiss it.

3. **The learned trial Judge erred in law and fact to sentence the Appellant to illegal sentences of 60 years' imprisonment and 15 years' imprisonment without considering the period spent on remand.**

The appellant's counsel submitted that the learned trial judge did not consider the period the appellant had spent on remand. According to the sentencing notes, the trial judge considered the mitigating factors which were advanced by counsel for the state. Considering the statements made by the learned trial judge, he did not consider the mitigating factors advanced by counsel for the accused. According to the mitigating factors in the sentencing notes as submitted by counsel for the state, the period the appellant had spent on remand was not indicated. Counsel relied on article 23 (8) of the Constitution of the Republic of Uganda and submitted that the sentence was unlawful (see **Rwabugande Moses versus Uganda; Supreme Court Criminal Appeal No 25 of 2014** for the proposition that a sentence arrived at without considering the period spent on remand is an illegal sentence."

Counsel submitted that the learned trial judge passed sentence without considering the period spent on remand and ground 3 of the appeal should be allowed. She further prayed that this court invokes section 11 of the Judicature Act to impose its own sentence.

In reply to ground 3 of the appeal, the respondent's counsel conceded to ground 3 of the appeal on the authority of **Rwabugande Moses versus Uganda; Supreme Court Criminal Appeal No 25 of 2014** that a sentence arrived at without taking into consideration the period spent on remand is illegal for failing to comply with article 23 (8) of the Constitution of the Republic of Uganda.

The respondent having conceded that the learned trial judge did not take into account the period the appellant spent on remand prior to his conviction and sentence, there is no need for us to consider ground 4 of the appeal which is to the effect that the sentence of 60 years' imprisonment is a harsh sentence.

Resolution of appeal

We have carefully considered the Appellant's appeal, the written submissions of Counsel that we have set out above, the authorities referred to, and the applicable law generally.

This appeal arises from a decision of the High Court acting in the exercise of its original jurisdiction and is a first appeal. In an appeal of first instance, the court has discretion in matters of factual controversy to reappraise the evidence contained in the printed record of proceedings by subjecting that evidence to fresh scrutiny and arriving at its own inferences on matters of fact hearing in mind it has neither heard not seen the witnesses testify unlike the trial judge. Therefore, and except on justifiable grounds, we ought to defer to the conclusions of the judge on matters of credibility of witnesses whenever it is in issue (See **Pandya v R [1957] EA 336, Selle and Another v Associated Motor Boat Company [1968] EA 123,** as well as **Kifamunte Henry v Uganda; SCCA No. 10 of 1997**). The duty of this court in reappraisal of evidence is enabled by rule 30(1)(a) of the **Judicature (Court of Appeal Rules) Directions, S.I No. 13-10**, which provides that on appeal from the decision of the High Court in the exercise of its original jurisdiction, the court may reappraise the evidence and draw inferences of fact.

Ground 1 of the appeal is on the issue of whether the learned trial judge reached the correct decision in finding that the appellant was properly identified by a single identifying witness. Ground 2 on the other hand is about whether, the ingredient of theft was proved on the issue of whether robbery was proved. Ground 3 of the appeal was conceded to by the respondent on the ground that the learned trial judge did not take into account the period that the appellant had spent on pre-trial detention prior to the completion of his trial contrary to article 23 (8) of the Constitution of the Republic of Uganda.

Ground 1

The learned trial judge erred in law and fact to convict the appellant of the offence of murder when the ingredient of participation not been proved.

The main issue relating to participation of the appellant is whether he was identified and put at the scene of the crime. The law on identification was set out by the Supreme Court in **Uganda v George Wilson Simbwa; Supreme Court Criminal Appeal No 37 of 1995** where the Supreme Court noted that the law regarding identification by a single witness is well settled and has been stated in numerous decisions cited in that case. These decisions *inter alia* include Abdala **Bin Wendo and Another v R (1953) 20 EACA 166; Roria v R (1967) E.A. 583** and **Abdula Nabulere and 2 Others v Uganda: Criminal Appeal No 12 of 1981**. In **Uganda v Simbwa** (supra) the Supreme Court summarised the law and procedure as follows:

> Briefly, the law is that although identification of an accused person can be proved by the testimony of a single witness, this does not lessen the need for testing with the greatest care the evidence of such a witness regarding identification, especially when conditions favouring correct identification are difficult. Circumstances to be taken into account include the presence and nature of light; whether the accused person is known to the witness before the incident or not; the length of time and opportunity the witness had to see the accused; the distance between them. Where conditions are unfavourable for correct identification, what is needed is other evidence pointing to guilt from which it can be reasonably concluded that the evidence of identification can safely be accepted as free from possibility of error. The true test is not whether the evidence of such a witness is reliable. The witness may be truthful and this evidence apparently reliable and yet there is still the risk of an honest mistake particularly in identification. The true test is that laid down by the cases above referred to which, briefly, is whether the evidence can be accepted as free from the possibility of error. In the case of Abdala Nabulere (supra) the Court of Appeal for Uganda put it this way:
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> > Where the case against an accused depends wholly or substantially on the correctness of one or more identifications of the accused, which the defence disputes, the judge should warn himself and the assessors of the special need for caution before convicting accused in reliance on the correct identification or identifications. The reason for the special caution is that there is a possibility that a mistaken witness can be a convincing one, that even a number of such witnesses can all be mistaken. The judge shall then examine closely the circumstances the identification came to be made, particularly the length of time, the distance, the light, the familiarity of the witness with the accused. All these factors go to the quality of the identification evidence. If the quality is good the danger of a mistaken identity is reduced, but the poorer the quality the greater the danger.

The single identifying witness in this appeal is PW1 Ruth Kyarikunda a businesswoman and a widow of the deceased. She stated that on 12th November 2009 at around 10 PM she told her husband that since the customers had gone, she would go and sleep. She had a bar and was selling beer and left her husband in the bar and went to sleep in the room near the bar area. As she reached the bedroom, her husband (the deceased) pulled the outdoor to close it and then thieves who had a big stone hit his head with it whereupon he screamed and rushed to the bedroom. The thieves shot at him and he fell into their bedroom. She saw 6 holes in the door, so there were 6 bullets. Particularly in relation to the identification the witness testified as follows:

> Then the thieves came, got me from the bedroom and took me to the shop/bar where they ordered me to give them money.
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> There were 4 people, 3 were inside the bar/shop and one was outside. One had a piece of wood shaped like a panga, the other hand a piece of wood shaped like a baton which he was using to beat me, the 3rd one had a gun, which he was using to hit me to bring money. The 4th one who was outside had covered himself with a hat I could not see him properly. I got shillings 600,000/= and gave it to them. After getting money from me they took me to where my husband was and ordered me to lie down besides my husband. The 3 robbers, all of them kept jumping us 3 times. After that they went to the shop and took other shop items.
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> - 7 crates of beer.
> - 5 boxes chief waragi.
> - Boxes of coffee waragi.
> - A suitcase of our clothes
>
> They also took money from the drawer which had not yet counted on that evening during the time of the attack, identified these two accused persons because they were the ones hitting me with stick and I kept raising my eyes and gazing at them. The other one with a gun had covered himself on the face and mouth. I could not recognise him.

The accused had torches, and when could flash, he would flash one in the face. I saw them when they entered in the house they broke the bulb. In the bedroom there was no light.

The learned trial judge considered the question of whether the two accused persons did not participate in the commission of any of the two offences with which they were charged. She also considered the fact that PW1 identified the accused persons among the attackers. She managed to identify the appellant at the scene of crime. He noted that the accused persons beat her and had torches which they were flashing all over the room.

That the accused persons beat her and they had torches which they were flashing all over in the room. This witness maintained her testimony even in cross examination how she came to identify the accused persons. On this piece of evidence counsel for the accused submitted that from the circumstances that pertained in the bar/shop PW1 never identified the attackers. The issue of identification had been settled in a number of cases, in the case of Abudalla Nabulere and Others v Uganda [1979] HCB 77...

In the instant case, PW1 gave evidence that she took long with the attackers in the bar/shop who were demanding for money. The attackers in the said room had torches they were flashing assisting her to get them money where she was keeping it within the bar/shop. With that light from the flashing torches PW1 was able to see where her money of the day's sales from the drawer and the money she had kept in a polythene bag and hidden among the sacks of goods within the shop.

Second, the attackers with the use of the light from the torches were able to collect all the items they stole from the bar/shop. In that regard, I find that there was enough light in the said room from the flashing torches which within that long time PW1 was with the attackers; she was able to identify her attackers. Again from her evidence, the room of the bar/shop was a small area, which proves her evidence that she was close to her attackers as the continuously demanded money from her. That short distance from

her and her attackers, coupled with the flashing light from the torches, I am convinced that PW1 was able to identify some of her attackers.

We have carefully considered the evidence of the prosecution witness PW1 coupled with the identification parade in which the appellant was identified as one of the assailants by PW1. PW1 was cross examined on the issue of whether she saw the appellant. She insisted that she saw the accused person. No dent was made into her testimony as far as her identification of the appellant is concerned.

We have carefully considered the doctrine and the evidence on identification. Identification of the suspect can be proved through testimony of a single witness. Where there is the testimony of a single identifying witness, that evidence should be treated with the greatest care and the judge should caution himself and the assessors of the need for care in admitting and accepting the testimony of a single identifying witness. In such cases the issue is whether the evidence is free of the possibility of error. This is established or tested by *inter alia* careful examination of the circumstances surrounding the identification or the conditions favouring correct identification which include:

- the quality of the light for visibility.
- The distance between the witness and the accused at the time of identification.
- The duration of time the witness had to identify or the opportunities to identify that arose in the circumstances at the time of commission of the offence.

We have accordingly carefully considered the circumstances. The offence took place at night at around 10 PM. PW1 saw the thieves come in, hit her husband with a stone and shoot him whereupon he fell into the bedroom where she had just gone. The thieves came and got her from the bedroom and took her to the shop/bar which was adjacent. She was ordered around. She was able to tell that there were 4 people and one was outside. 3 of the assailants were inside. One had the wood shaped like a panga. Another hard wood shaped like a baton which he used to beat her. She did not properly see the assailant who was outside as he

covered his head with a hat. She got shillings 600,000 and gave to the assailants. She was taken to where her husband lay down and was told to lie besides him. The assailants jumped over them 3 times. The assailants also took money from a drawer. She testified that she identified the 2 people because they were hitting her with a stick and she kept on raising her eyes and gazing at them. The assailants had torches which they kept flashing around. One had a gun and covered his face and mouth and she could not recognise him. She saw them when they broke into the house. In further testimony she testified that they took a long time about 30 minutes. PW1 had ample opportunity and conditions of the flashlight to identify some but not all and she indicated whom she could not identify. She saw what they were carrying which is not even in dispute. She did not know the appellant before but was able to pick him from the identification parade.

The opinion of the assessors who had the opportunity to see and hear the witness testify is that PW1 in her testimony by the time of identification had a long time of about 30 minutes in the shop while the appellant was demanding money from her. During the scuffle the attackers had a torch which they kept flashing in all directions in the house and at her and this allowed PW1 to recognise the attackers as light fell on their faces.

The opinion of the assessors is supported by the evidence of the fact that the witness was able to identify the objects that have assailants used to beat her and were carrying. If she could recognise the objects, it is very likely with a high probability that she was able to see the appellant and recognise him later.

We agree with the learned trial judge that the witness PW1 had ample time and opportunities within which to identify some of the assailants. There were 4 assailants. Secondly they had torches. Thirdly, the opportunities she had included the fact that she handed over money to the assailants and she was beaten. In other words, there was a short distance between her and her assailants when she was beaten. Particularly it is important that she kept on looking or gazing at her assailants when the activity of robbery was going on. This is what she stated:

they also took money from the drawer which I had not yet counted on that evening during the time of the attack, identified these 2 accused persons because they were the one hitting me with stick and I kept raising my eyes and gazing at them. The other one with a gun had covered himself on the face and mouth. I could not recognise him.

She also testified that she saw them when they entered in the house and they broke the bulb. In the premises, there was opportunity for her to identify some or all of the assailants. The ones that she did not identify, she stated that she did not identify. Secondly, the testimony of PW6 S.P Turinawe Christopher was that he conducted an identification parade. He got 10 people of similar characteristics in terms of colour and size. He then invited PW1 to come and identify the suspect. When she came, she told them to 1st turn their backs and then they should come to their normal positions. After some time, she identified the appellant. She insisted that he was the very person who was in her house. She identified one person. The identification parade form was allowed in evidence as exhibit P3.

In the circumstances, we are satisfied that the appellant was properly identified and ground 1 of the appeal with regard to participation of the appellant has no merit and is hereby disallowed.

Ground 2 of the appeal:

The learned trial judge erred in law and fact convict the appellant of the offence of aggravated robbery when the ingredient of theft had not been proved.

The appellants counsel relied on the fact that no exhibits of the stolen property was recovered or exhibited. We find that this ingredient of the offence had no merit. The clear testimony of PW1 is that she handed over money to the assailants on the orders of the assailants who were armed. In any case we agree with the learned trial judge that there was common intention of robbery which was the whole purpose of the exercise of beating harassing and shooting which was clearly narrated by PW1. The element of theft was therefore proven through the testimony of PW1 who listed the items taken by the robbers. Ground 2 of the appeal has no merit and is hereby disallowed.

Upon disallowing grounds 1 and 2 of the appeal, the conviction of the appellant for the offence of murder and aggravated robbery contrary to sections 188 & 189 with regard to the murder and section 285 and 286 (2) of the Penal Code Act with regard to aggravated robbery is upheld.

Ground 3 of the appeal:

The learned trial judge erred in law and fact to sentence the appellant to illegal sentences of 60 years' imprisonment and 15 years' imprisonment without considering this period spent on remand.

The respondent's counsel conceded that the learned trial judge did not consider the period the appellant spent on remand in violation of article 23 (8) of the Constitution of the Republic of Uganda.

We have considered the sentencing notes of the learned trial judge who stated as follows:

> I have considered the mitigating factors advanced by counsel for the parties in mitigation for an appropriate sentence to be passed against the convict.
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> Wherefore, in agreement with the factors in mitigation for sentence that have been articulated by counsel for the state, I sentence the convict: on count 1 of murder to 60 years' imprisonment in prison. On count to of aggravated robbery to 15 years' imprisonment in prison.

We have considered the prosecution submission in mitigation and there is no indication of the period the appellant had spent in pre-trial detention. Secondly, Mr. Bwagi Jonathan for the convict submitted that the convict is only 38 years old, had been in custody since 30th of November 2010. Nonetheless, the learned trial judge has not demonstrated that he had taken into account the period the appellant had spent from 30th of November 2010 until 6th December 2013 when the appellant was convicted and prior to imposing a sentence of 60 years' imprisonment. We allow ground 3 of the appeal and set aside the sentence for violation of article 23 (8) of the Constitution of the Republic of Uganda.

Exercising the jurisdiction of this court under section 11 of the Judicature Act, we would sentence the appellant afresh.

We have carefully considered the authorities on aggravated robbery and murder. The appellants counsel prayed that the court considers the range of sentences in previous decisions to arrive at an appropriate sentence. The appellants counsel relied on **Atiku v Uganda; Court of Appeal Criminal Appeal No 41 of 2009** where the convict had been sentenced to life imprisonment. On appeal, the Court of Appeal set aside the life imprisonment sentence and imposed a term of 20 years' imprisonment.

As far as the appellant's case is concerned, the appellants counsel submitted that the court should pass a sentence which was appropriate. The appellant is aged 45 years and is advanced in age. He was a first offender and had been in custody since November 2010. From that time the appellant has been in custody, he has repented and is remorseful. She prayed that the court imposes a sentence of 20 years' imprisonment.

In reply the respondent's counsel submitted that after considering both the aggravating and mitigating factors, a sentence of 38 years' imprisonment for murder would be appropriate. For aggravated robbery he proposed 30 years' imprisonment as fitting. He relied on **Nabongo Ibrahim v Uganda; Court of Appeal Criminal Appeal No 0181 of 2014** where similar sentences were passed for murder and aggravated robbery.

In **Nabongo Ibrahim v Uganda; Court of Appeal Criminal Appeal Number 0181 of 2014** the High Court had convicted the appellant of murder and aggravated robbery. 2 persons had been tried and the facts were that on 25th June 2010 they robbed the deceased of a motorcycle and immediately before or immediately after the robbery used a deadly weapon which was a sharp object. Further they had murdered the victim of the robbery. The High Court sentenced the appellants to life imprisonment and on appeal against sentence, this court considered the fact that the appellant had been on remand for a period of 3 years, 3 months and 5 days. They found that a sentence of 38 years' imprisonment for the count of murder and 30 years' imprisonment for aggravated robbery to be appropriate. From that period the court deducted the period of 3 years and 3 months and

sentenced the appellant to 26 years, 8 months and 25 days for aggravated robbery and 34 years, 8 months and 25 days for the count of murder. The decision is dated 11th of November 2021.

In **Bogere Asiimwe Moses and Senyonga Sunday v Uganda; Supreme Court Criminal Appeal No 39 of 2016 [2018] UGSC (19th April 2018),** the Supreme Court upheld a sentence of 20 years' imprisonment imposed for aggravated robbery. The Appellants were 22 and 23 years old respectively and court noted that there was no violence, no death occurred and some property was recovered. In **Tukamuhebwa David Junior and Mulodo Yubu v Uganda Supreme Court; Criminal Appeal No 59 of 2016 [2018] UGSC 7 (9th April 2018)**, a sentence of 18 years imprisonment for aggravated robbery was set aside for being in contravention of Article 23 (8) of the Constitution whereupon the Supreme Court imposed a sentence of 20 years imprisonment in respect of respect of the offence of aggravated robbery from which the period of 3 years and 7 months the appellant had spent in lawful custody was deducted whereupon he was sentenced to 16 years and five months from the date of sentence by the High Court. The aggravated robbery was coupled with rape.

In **Muchunguzi Benon and Muchunguzi Thomas J v Uganda; Court of Appeal Criminal Appeal No 008 of 2008 [2016] UGCA 54 (26th October 2016)**, the Appellants were convicted of aggravated robbery and sentenced to 15 years' imprisonment by the High Court. On appeal to the Court of Appeal, this court found no reason to interfere with the sentence of 15 years' imprisonment after reviewing previous authorities. The robbery involved violence in that the victim of the offence had been hacked with a cutlass and had sustained several injuries on her body.

In **Naturinda Tamson v Uganda; Supreme Court Criminal Appeal No 025 of 2015 [2017] UGSC 64 (26th April 2017)**, was a second appeal to the Supreme Court where the Appellant had been sentenced to 16 years' imprisonment for aggravated robbery by the Court of Appeal. The Appellant had been convicted by the High Court of the offences of rape, defilement and aggravated robbery and had been sentenced to 18 years' imprisonment on each of the counts which sentences were to run concurrently. Being dissatisfied with the sentence, the Appellants appealed to the Court of Appeal against sentence which sentences were

varied and the Court of Appeal imposed a sentence of 16 years' imprisonment for aggravated robbery. On further appeal to the Supreme Court, the Supreme Court dismissed the appeal against sentence.

With regard to the conviction for murder we have considered the following precedents.

In **Kasaija v Uganda; Court of Appeal Criminal Appeal No 128 of 2008, [2014] UGCA 47** the Appellant had been tried and convicted of two counts of murder by the High Court and sentenced to life imprisonment. On appeal to this court against sentence only on the ground that the sentence imposed by the learned trial Judge was harsh and manifestly excessive the appeal was allowed. The Court of Appeal took into account, the mitigating factor that the Appellant was a first offender and had spent 2 ½ years on remand prior to his trial and conviction. He was 29 years old and a relatively young man at the time of commission of the offence. The aggravating factor was that he has committed a very serious offence leading to the loss of life in each count being a senseless and brutal murder of two suspects already under arrest and which undermined due process. The appellant was sentenced to 18 years' imprisonment on each count to be served concurrently from the date of conviction.

In **Atiku Lino v Uganda; Criminal Appeal No 0041 of 2009 [2016] UGCA 20 (6th June 2016)**, the Appellant used a cutlass and cut the deceased several times causing her death. His appeal against sentence was allowed and sentence reduced from life imprisonment to 20 years' imprisonment. The court took into account the mitigating factor that he was a first offender and was only aged 31 years at the time of commission of the offence.

In **Tumwesigye Anthony v Uganda; Court of Appeal Criminal Appeal No 46 of 2012 [2014] UGCA 61 (18th December 2014)** the Appellant had been convicted of the offence of murder and sentenced to 32 years' imprisonment. His appeal against the sentence on the ground that it was harsh and manifestly excessive was allowed. The Appellant was a first offender and 19 years old at the time of commission of the offence. The court set aside the sentence and substituted it with a sentence of 20 years' imprisonment to be served from the date of conviction.

At the time of sentence, the appellant was about 38 years old. However, he had been charged by 30th of November 2010 which means that he was about 34 years and 11 months old at the time he committed the offence. He was in lawful custody for 3 years and one month before his conviction and sentence on 6th November 2013. The appellant has no previous record of conviction but under the facts and circumstances, he had committed a grave offence in that the victim of the robbery was murdered. Secondly, he was also convicted of murder. Another person was injured and the other victim of the robbery was beaten with sticks and therefore the robbery involved extreme violence that resulted in the death of the husband of PW1. Taking into account all the circumstances and previous precedents we find that a sentence of 30 years' imprisonment would be appropriate for the offence of murder and 18 years' imprisonment for the offence of aggravated robbery. From that period, we would deduct the period of 3 years and one month that the appellant had spent in pre-trial detention before his conviction and sentence on 6th December 2013. We accordingly sentence the appellant to serve 26 years and 11 months for the offence of murder and 14 years 11 months for the offence of aggravated robbery. The sentences will be served concurrently with effect from the date of conviction and sentence on 6th December 2013.

Dated at Mbarara the 24th day of March 2022

Fredrick Egonda – Ntende

Justice of Appeal

Catherine Bamugemereire

Justice of Appeal

Christopher Madrama

Justice of Appeal