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**THE REPUBLIC OF UGANDA  
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA  
CRIMINAL APPEAL NO. 265 OF 2015**

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**KAVUMA ROBERT:.....APPELLANT  
VERSUS  
UGANDA:.....RESPONDENT**

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*(Arising from the decision of the High Court by Elizabeth Jane Alividza, J in High Court Criminal case No.206 of 2013, dated the 17<sup>th</sup> day of July 2015)*

**JUDGMENT OF THE COURT**

**Introduction**

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The appellant and another were indicted with; **Count 1 of Murder** contrary to **sections 188 and 189 of the Penal Code Act**; and **Count 2 of Aggravated Robbery** contrary to **sections 285 and 286 (2) of the Penal Code Act**. The appellant was convicted and sentenced to **30 years imprisonment on count 1** and **20 years imprisonment on count 2**, the sentences were to run consecutively.

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**Background to the appeal**

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It was alleged that on the 15<sup>th</sup> day of September 2012, in Kitende Primary school playground in Wakiso District, the appellant murdered Masembe Akim and stole his motorcycle No. UDW 726R Bajaj Boxer, red in colour valued at 3.2 million shillings and during the said robbery, used a deadly weapon to wit iron bars on the said Masembe Akim.

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The brief facts of the case were that on the 15<sup>th</sup> of September 2012, the deceased (Masembe Akim), a bodaboda rider, was found by the Police, badly assaulted at Kitende Primary School. The deceased's motorcycle was missing. He was rushed to the hospital and he died a few days later.

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5 A few days later, a Local Council Chairman in Kayunga District was alerted that a one Sikyomu Jamali (A1 at the lower Court) had come back to the village with a friend and they had a motorcycle which they were selling. The said motorcycle was suspected to have been stolen. The chairman (PW1) organised some residents and they raided the house where A1 and A2 (the appellant) were. The two were arrested and they confessed  
10 to having stolen the motorcycle from Kajjansi. A1 died in prison before the trial and the case against him abated.

The appellant was charged, tried and convicted for the offences of Murder and Aggravated Robbery. He was sentenced to **30 years imprisonment on count 1** and **20 years imprisonment on count 2**, the sentences were to run consecutively.

15 Being aggrieved by the decision of the trial Court, the appellant with leave of Court appeals against sentence only on the following ground:-

**“The learned trial Judge erred in law and fact by imposing a manifestly harsh sentence on the appellant.”**

#### 20 **Legal representation**

At the hearing, Ms. Awelo Sarah appeared for the appellant on State brief while Ms. Nakafeero Fatina, appeared for the respondent. Due to the COVID-19 pandemic restrictions, the appellant was not physically present in Court but attended the proceedings via video link using Zoom technology from Prisons.

25 Both counsel filed and adopted their written submissions.

#### **Submissions of counsel for the appellant**

Counsel submitted that this Court can only interfere with a sentence imposed by a trial Court in a situation where the sentence is either illegal, or founded upon a wrong  
30 principle of the law or where the trial Court has not considered a material factor in the case or has imposed a harsh and manifestly excessive sentence in the circumstances of



5 the case. He relied on the case of *Abaasa Johnson vs. Uganda, Criminal Appeal No.33 of 2010*.

Counsel averred that the appellant is a first offender with no previous criminal record, has three children and family responsibilities to take care of. She referred Court to the cases of *Ederema Tomasi vs. Uganda, Court of Appeal Criminal Appeal No.554 of 2014*; *Margaret Opii vs. Uganda, Court of Appeal Criminal Appeal No.123 of 2008*; *Korobe Joseph vs. Uganda, Court of Appeal Criminal Appeal No.243 of 2013*; *Mbunya Godfrey vs. Uganda, Supreme Court Criminal Appeal No.004 of 2011*; *Ouke 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 and anor vs. Uganda, Court of Appeal Criminal Appeal No.83 of 2010*, in which Court reduced several sentences for murder and aggravated robbery.

She prayed that the appeal be allowed and the said sentence be reduced to a 10 years imprisonment sentence on both counts, to be served concurrently.

#### 20 **Submissions of counsel for the respondent**

Counsel opposed the appeal in its entirety and supported the sentences as imposed by the learned trial Judge.

She submitted that the Supreme Court *in Criminal Appeal No.16 of 2000, Wamutabaniwe Jamiru vs. Uganda*, held that the Appellate Court is not to interfere with the sentence imposed by a trial Court which has exercised its discretion, unless the exercise of the discretion is such that it results in the sentence being imposed to be manifestly excessive or so low as to amount to a miscarriage of justice or where a 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 also: *Kyalimpa Edward vs. Uganda, Supreme Court Criminal Appeal No.10 of 1995*.



5 Counsel contended that the trial Judge in arriving to the sentence of 27 years imprisonment considered both the mitigating factors and the aggravating factors. She referred Court to the case of *Karisa Moses vs. Uganda, Supreme Court Criminal appeal No.23 of 2016*, where Court confirmed a life imprisonment sentence for murder and held:- *“An appropriate sentence is a matter for the discretion of the sentencing*  
10 *Judge. Each case presents its own facts upon which a judge exercises his discretion. It is the practice that as an appellate court, this Court will not normally interfere with the discretion of the sentencing Judge unless the sentence is illegal or unless Court is satisfied that the sentence imposed by the trial Judge was manifestly so excessive as to amount to an injustice”*

15 Counsel noted that **the Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013**, provides for the starting point for aggravated robbery to be 3 years and the sentencing range being 30 years upto death. She further relied on the case of *Otim Moses vs Uganda, Supreme Court Criminal Appeal No.06 of 2019*, where Court upheld a sentence of life imprisonment for the offence of  
20 aggravated robbery.

As regards the issue on consistency in sentencing, counsel contended that the Supreme Court in *Kaddu Kavulu Lawrence vs. Uganda, Criminal Appeal No.72 of 2018*, cast doubt on the application of the principle when it ignored arguments raised for the appellant about the weight to be placed on precedents in sentencing.

25 Counsel prayed that the sentence of 27 years imprisonment be upheld and the appeal be dismissed.



Consideration by Court

This is a first appeal and the duty of this Court as a first appellate Court is to re-evaluate the evidence and reach it's own conclusions on the evidence, bearing in mind that it did not see the witnesses testify. See: *Kifamunte vs. Uganda, Supreme Court Criminal Appeal No.10 of 1997.*

- 10 It is trite law that the Appellate Court is not to interfere with the sentence imposed by a trial Court which has exercised its discretion, unless the exercise of the discretion is such that it results in the sentence being imposed to be manifestly excessive or so low as to amount to a miscarriage of justice or where a trial court ignores to consider an important matter or circumstance which ought to be considered while passing the
- 15 sentence or where the sentence imposed is wrong in principle. See: *Kamya Johnson Wavamunno vs Uganda, Criminal Appeal No. 16 of 2000* and *Kiwalabye vs Uganda, Supreme Court Criminal Appeal No. 143 of 2001.*

In the instant case, during allocutus/mitigation, counsel for the defence/appellant Mr. Sekyanda submitted: “*My Lord the convict is a first offender with no previous criminal*

20 *record. Your honor he is a young man who has responsibilities of his family. Your honor the state's proposed 45 and 43 years consecutively your honor we see that as being on a harsh side.*

*The convict your honor has been on remand for 3 years, a period which we desire court to take into consideration in awarding the sentence.*

- 25 *As he stands remorseful before this honourable Court, my lord it is our humble prayer that the Court is invited to exercise leniency in awarding the sentence to the convict.”*  
*[Sic]* Underling is ours for emphasis.

The trial Judge while sentencing, stated as follows: -

 → *tone* ← 

5 *“Theft of motorcycles is becoming a chronic problem in Uganda which should be stopped. The murder of the deceased was senseless death, the deceased was a bread winner and now his family is suffering.*

*I also note that the convict is a first offender. You are young, I believe there is room for u to reform and this is why I won't impose a death penalty but your*  
10 *case deserves the death penalty, however, I am sentencing you to 30 years on count one.*

*On count 2 of robbery, theft of motorcycles as I said is very rampant. There is need for a deterrent sentence and I am therefore accordingly sentencing you to*  
15 *a sentence of 20 years. These sentences are to run consecutively. You finish one sentence and then you start another one because one of the reasons is to ensure that the society is protected from people like you.*

*So let people sleep a bit, when you come back from prison, then they will start being awake again.”*

From the above, the learned trial Judge considered the mitigating and the aggravating  
20 factors. The appellant was sentenced to a consecutive sentence of **30 years imprisonment on count 1** and **20 years imprisonment on count 2**, but not 27 years imprisonment as alluded to by counsel for the respondent.

The trial Judge, however, did not take into account the period that the appellant spend  
25 on remand. The period spent on remand by the appellant was from the 23<sup>rd</sup> September 2012 until 17<sup>th</sup> July 2015 the date of conviction. The period being 2 years and 10 months.

The trial Judge failed in her duty to take into account the period that the appellant spent on remand as required under **Article 23 (8) of the Constitution of Uganda**. The section provides: -

30 **“(8) 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**

5            **offence before the completion of his or her trial shall be taken into account in imposing the term of imprisonment.”**

The sentences of **30 years imprisonment on count 1** and **20 years imprisonment on count 2** as imposed by the trial Judge without taking into account the period spent on remand contravened **Article 23(8) of the Constitution of Uganda.**

10        In the result, we find that the sentences passed on both counts by the trial Judge are illegal and are hereby set aside.

Having found so, we invoke **section 11 of the Judicature Act (CAP 13)** which grants this Court powers of original jurisdiction and determine an appropriate sentence in the circumstances of this case.

15        **The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013** provide for the starting point in sentencing for the offences of Murder and aggravated robbery as 30 years and the maximum being death.

In the case of *Ndyomugenyi vs. Uganda, Supreme Court Criminal Appeal No.57 of*  
20        *2016*, the Supreme Court confirmed a sentence of 32 years imprisonment for murder as passed by the re-sentencing Judge and confirmed by the Court of Appeal.

The Supreme Court in *Criminal Appeal No.03 of 2013, Akbar Hussein Godi vs. Uganda*, upheld the concurrent decision of the trial Court and the Court of Appeal and confirmed a sentence of 25 years imprisonment for the offence of Murder.

25        This Court in *Muchunguzi Benon and Muchunguzi Thomas vs. Uganda, Criminal Appeal No.0008 of 2008*, confirmed a sentence of 15 years imprisonment for the offence of aggravated robbery as it found no reason to interfere with it.


In the circumstances of the case, considering the authorities above cited and taking into account all the mitigating and aggravating factors, as well as the 2 years and 10 months  
30        that the appellant spent on remand, we sentence the appellant as follows:


The page concludes with three handwritten signatures in blue ink. The first signature is a stylized 'RP'. The second signature is 'Bue'. The third signature is a more complex, cursive signature.


- 5 1. On count 1 of Murder, we sentence the appellant to 28 years imprisonment.  
Taking into account the 2 years and 10 months spent on remand. The appellant  
will therefore serve a sentence of 25 years and 2 months imprisonment.
2. On count 2 of Aggravated Robbery, we sentence the appellant to 18 years  
imprisonment. Taking into account the 2 years and 10 months spent on remand.  
10 The appellant will therefore serve a sentence of 15 years and 2 months  
imprisonment.

The sentences are to run consecutively from 17<sup>th</sup> July, 2015 the date of conviction.  
We so hold.

15 Dated at Kampala this 10<sup>th</sup> day of February 2022

  
.....  
**RICHARD BUTEERA**  
DEPUTY CHIEF JUSTICE

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.....  
**ELIZABETH MUSOKE**  
JUSTICE OF APPEAL

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.....  
**CHEBORION BARISHAKI**  
JUSTICE OF APPEAL

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