

**THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CRIMINAL APPEAL NO. 0264 OF 2015**

SSENKUNGU AKIM:.....APPELLANT

VERSUS

UGANDA:.....RESPONDENT

(Appeal from the decision of the High Court of Uganda at Entebbe before Alividza, J. delivered on 17th July, 2015 (conviction) and 20th July, 2015 (sentencing) in Criminal Session Case No. 0200 of 2013)

**CORAM: HON. MR. JUSTICE RICHARD BUTEERA, DCJ
HON. LADY JUSTICE ELIZABETH MUSOKE, JA
HON. MR. JUSTICE CHEBORION BARISHAKI, JA**

JUDGMENT OF THE COURT

Background

On 17th July, 2015, the High Court (Alividza, J.) convicted the appellant of the offence of Aggravated Robbery contrary to **Sections 285 and 286 (2)** of the **Penal Code Act, Cap. 120**. On 20th July, 2015, the High Court sentenced the appellant to 27 years imprisonment upon that conviction.

The decision of the High Court followed the trial of the appellant on an indictment that alleged that he and another person, on the 6th day of May, 2012, at Bwebajja, Ssisa Sub-County in the Wakiso District robbed one Kalule Abdul (the victim) of his Beretta pistol No. D49958Z loaded with fourteen rounds of ammunition, one Tecno Mobile Phone T390 on lines 0772394457, 0701394457, 0711041982, Two ladies hand bags and cash Ug. Shs. 100,000/= and at or immediately after the said robbery used a deadly weapon to wit a gun on the victim.

The summary of the findings of fact from the judgment of the learned trial Judge is as follows: The victim, a police officer at the rank of Superintendent of Police, lived at Bwebajja – Sisa Sub-County in Entebbe. At an unspecified time on the night of 6th May, 2012, the victim, in the company of his pregnant wife and another lady, was driving home after attending a wedding, when



they were attacked by assailants armed with a gun. The assailants stole some property from the victim including his official gun, mobile phones and money – Ug. Shs. 100,000/= and thereafter disappeared from the scene.

On 9th August, 2012, about four months after the incident, the appellant was intercepted by police officers at a place along Mbarara – Masaka Road, while he was travelling as the passenger on a motorcycle ridden by another man. The police officers conducted a search and recovered a pistol with 8 rounds of ammunition. The police officers discovered that the pistol was the same one that was stolen from the victim. The appellant and the other man were arrested, charged and tried for Aggravated Robbery. At the trial, the appellant denied having participated in robbing the victim, he stated that he was only carrying the pistol to its owner in Mbarara. However, the learned trial Judge rejected the appellant's defence and found him guilty of Aggravated Robbery under the doctrine of recent possession of stolen property, and thereafter sentenced him accordingly.

The appellant was dissatisfied with the sentence imposed by the learned trial Judge and, with leave of this Court, now appeals against sentence only, on the sole ground that:

"The learned trial Judge erred in law and fact when she sentenced the appellant to thirty years imprisonment, which is manifestly harsh."

The respondent opposed the appeal.

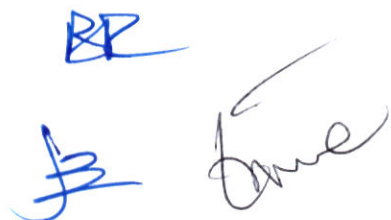
Representation

At the hearing, Ms. Awelo Sarah, learned counsel, appeared for the appellant. Ms. Fatina Nakafeero, holding brief for Mr. Kyomuhendo Joseph, both Chief State Attorneys in the Office of the Director of Public Prosecutions, appeared for the respondent.

Written submissions were filed for the parties, and adopted at the hearing, in support of the parties' respective cases.

Appellant's submissions

Counsel submitted that this Court ought to set aside the sentence of 30 years imprisonment that the learned trial Judge imposed on the appellant on ground that the sentence was excessive. Counsel reiterated the proposition



that was emphasized in **Abaasa Johnson vs. Uganda, Court of Appeal Criminal Appeal No. 33 of 2010 (unreported)**, that an appellate Court may set aside the sentence imposed by the trial Court, on ground, inter alia, that the sentence was manifestly excessive in the circumstances. Counsel referred the Court to decided aggravated robbery cases where shorter sentences were imposed, such as: **Ouke Sam vs. Uganda, Court of Appeal Criminal Appeal No. 251 of 2002 (unreported)** where a sentence of 9 years imprisonment was imposed; **Adam Jino vs. Uganda, Court of Appeal Criminal Appeal No. 50 of 2006 (unreported)** where this Court reduced a sentence of life imprisonment and substituted it with one of 15 years imprisonment; and **Kusemererwa and Another vs. Uganda, Court of Appeal Criminal Appeal No. 83 of 2010 (unreported)** where this Court reduced a sentence of 20 years imprisonment and substituted a sentence of 13 years imprisonment.

Counsel prayed that this Court sets aside the sentence of 30 years imprisonment that the learned trial Judge imposed for Aggravated Robbery and substitutes it with a sentence of 10 years imprisonment.

Respondent's submissions

Counsel for the respondent agreed with his counterpart for the appellant that the guiding principles as to when an appellate court will interfere with a sentence imposed by the trial Court, were discussed in the authority of **Abaasa Johnson (supra)**. However, counsel contended that there was no justification for interfering with the sentence that the trial Court imposed on the appellant in the present case, as the learned trial Judge considered all the aggravating and mitigating factors and arrived at the right sentence in the circumstances.

Counsel further submitted that in the case of **Ojangole vs. Uganda, Supreme Court Criminal Appeal No. 20 of 2019**, the Supreme Court confirmed a sentence of 32 years imprisonment for aggravated robbery, and as such the lower sentence of 30 years imprisonment that was imposed on the appellant was not manifestly excessive.

Furthermore, counsel pointed out that the gun that the appellant stole from the victim was recovered with 8 rounds of ammunition yet it was stolen with

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14 rounds of ammunition. In counsel's view, the fact that the stolen gun was recovered with less ammunition than at the time it was stolen meant that the appellant had used it to commit more crime. Counsel invited this court to consider that the country is grappling with violent crime where innocent citizens are murdered and their property stolen by people like the appellant. Moreover, according to counsel, the appellant was not remorseful and had stated before sentencing that: **"that I did know that someone keeping me with something was an offence"**. Counsel contended that the highlighted statement was not that of a reformed man and it was likely that the appellant would continue to commit crime if he was given a shorter sentence.

Counsel contended that the sentence of 30 years imprisonment that the learned trial Judge imposed on the appellant for aggravated robbery was lenient and ought to be upheld by this Court.

Resolution of the Appeal

We have carefully studied the record, and considered the submissions of counsel for both sides, as well as the law and authorities in support thereof. Other applicable law and authorities that were not cited have also been considered.

This is a first appeal against sentence only. On a first appeal, this Court is, pursuant to **Rule 30 (1) (a) of the Judicature (Court of Appeal Rules) Directions, S.I 13-10**, expected to reappraise the evidence and make inferences of fact. Furthermore, in **Kifamunte vs. Uganda, Supreme Court Criminal Appeal No. 10 of 1997 (unreported)**, the Supreme Court articulated the principle that a first appellate Court has a duty to review the evidence of the case and to reconsider the materials before the trial judge and then make up its own mind not disregarding the judgment appealed from but carefully weighing and considering it. We shall bear the above principles in mind as we resolve the grounds of appeal.

Furthermore, it is now settled that a first appellate Court may only interfere with a sentence imposed by the trial Court on limited grounds only. In **Abaasa Johnson and Another vs. Uganda, Court of Appeal Criminal**

Appeal No. 33 of 2010 (unreported), this Court considered several authorities, and summarized the applicable principles as follows:

"It is now a well-settled position in law, that this Court will only interfere with a sentence imposed by a trial Court in a situation where the sentence is either illegal, or founded upon a wrong principle of the law. It will equally interfere with sentence, where the trial Court has not considered a material factor in the case; or has imposed a sentence which is harsh and manifestly excessive in the circumstance - (see James vs R. (1950) 18 E.A.C.A. 147, Ogalo s/o Owoura vs R. (1954) 24 E.A.C.A. 270, Kizito Senkula vs Uganda - S.C. Crim. Appeal No. 24 of 2001, Bashir Ssali vs Uganda - S.C. Crim. Appeal No. 40 of 2003, and Ninsiima Gilbert vs Uganda - C.A. Crim. Appeal No. 180 of 2010)."

The appellant challenges the sentence of the trial Court on the ground that the sentence was manifestly harsh and excessive. The learned trial Judge, while sentencing the appellant, stated as follows:

"There is no previous record. I will start with 35 years imprisonment. I also take note of the fact that robbery in this area is rampant and this was with violence. However, I note that there were minimum injuries caused to the victims but the robbers insisted on taking the victim's pistol. Therefore, the convict is sentenced to 30 years imprisonment. I will reduce the 3 years you have spent on remand and you will serve 27 years imprisonment."

We wish to note that although counsel for both sides stated in their submissions that the sentence imposed by the trial Court on the appellant was 30 years imprisonment, from the above passage, it is clear that the learned trial Judge's final sentence was that of 27 years imprisonment. Having said that, we note that counsel for the appellant contended that the sentence imposed on the appellant was manifestly excessive, especially considering that shorter sentences have been imposed by this Court in the decided cases of **Ouke Sam, Adam Jino and Kusemererwa (supra)**. Counsel for the respondent contended that that the sentence imposed on the appellant was lenient as a severer sentence of 32 years imprisonment was imposed in a similar previously decided case of **Ojangole (supra)**.

We are of the view that the sentencing range for aggravated robbery as established by the cases cited by counsel for either side is anywhere between

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9 years imprisonment to 32 years imprisonment. However, we emphasize that it is the learned trial Judge, who hears the case, with the primary role of determining the appropriate sentence. In the present case, the learned trial Judge considered all the mitigating and aggravating factors, and especially the fact that the appellant was part of a group of armed men that had attacked and stolen property from the victim. She thereafter imposed a sentence of 27 years imprisonment which was well within the sentencing range for aggravated robbery. Therefore, we cannot fault the learned trial Judge for exercising her discretion as she did.

For the above reasons, we dismiss the appeal and uphold the sentence of 27 years that the learned trial Judge imposed on the appellant for Aggravated Robbery.

We so order.

Dated at Kampala this^{19th} day of^{July} 2022.


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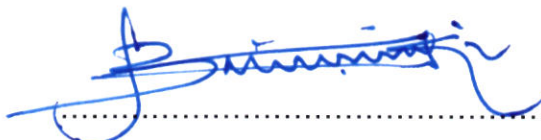
Richard Buteera

Deputy Chief Justice


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Elizabeth Musoke

Justice of Appeal


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Cheborion Barishaki

Justice of Appeal