THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT FORT-POTRAL
CRIMINAL APPEAL NO. 0059 OF 2014
(Arising from Criminal Case No. 203 of 2010)

TWESIGYE JOSEPH :: APPELLANT

VERSUS

UGANDA :: RESPONDENT

(Arising from the decision of the High Court of Kiboga, Wilson Masalu-Musene, J, dated 27th February 2014)

CORAM: **Hon. Mr. Justice Richard Buteera, DCJ**
Hon. Lady Justice Irene Mulyagonja, JA
Hon. Lady Justice Eva K. Luswata, JA

JUDGMENT OF THE COURT

Introduction

The appellant was convicted of the offence of Aggravated Robbery contrary to **Sections 285 and 286 (2) of the Penal Code Act, Cap 120,** and sentenced to 20 years' imprisonment.

Brief facts

It was the prosecution case that on the 27th day of July 2009 at around 03:00am, the victim was in her shop sleeping when assailants entered and put her on gun point. One had a panga and threatened to cut her. In the process, they robbed her of Shs. One Million (1, 000, 000/), a pair of bedsheets and a radio. They left after they had tied her hands and legs. She managed to untie herself and went to call her neighbours whose houses she found locked from outside.

On 29th July 2009, Twesigye Joseph (A1) went to the same shop of the victim at around 1:00pm to buy a cigarette. The victim managed to identify him as one of the people who had attacked her since he was still putting on the same clothes. She alerted her neighbours and they arrested him. On interrogation, A1 revealed that he committed the offence with the other accused persons who were also arrested and handed over to Police.

They were tried and convicted of Aggravated Robbery and duly sentenced to 20 years' imprisonment, hence this Appeal.

Grounds of Appeal

1. That the learned trial Judge failed to sum up to the assessors hence occasioning a miscarriage of justice.
2. That the learned trial Judge erred in law and fact when he dispensed a harsh and excessive sentence to the appellant of 20 years' imprisonment hence occasioning a miscarriage of justice.

The appellant thus prayed that; the Appeal is allowed, the sentence and conviction of the lower court be set aside and that the conviction of 20 years be substituted with a lesser sentence.

Representation

At the hearing of the Appeal, the appellant was represented by Mr. Chan Geoffrey Masereka while the respondent was represented by Ms. Immaculate Angutoko, Chief State Attorney.

Case for the appellant

Ground 1

Counsel for the appellant applied to abandon this ground and the prayer was granted.

Ground 2

Counsel moved under Section 132(1)(b) of the Trial on Indictments Act to seek leave to appeal against the sentence. That prayer was granted. He contended that the trial Judge in this case had not considered the mitigating factors before meting out a sentence of 20 years. He stated that the mitigating factors were that the appellant was a young man who could still reform and live a better life. Counsel thus argued that the learned trial Judge merely mentioned the mitigating factors as stated by defence counsel and went ahead to issue a deterrent sentence mentioning that the

other young men and would- be offenders would learn a lesson from him. He cited the case of ***Rwabugande Moses v Uganda; SCCA No. 25 of 2014***, where the Court substituted a sentence of 23 years with that of 21 years in a Murder charge. He thus implored Court to be pleased to reduce the sentence like it was done in ***Rwabugande*** (supra).

Case for the respondent

Counsel for the respondent submitted that a look at page 24 of the record of appeal showed that the learned trial Judge deducted (removed) the almost 5 years' period spent on remand from 25 years and deemed a sentence of 20 years as appropriate. To him, there was no illegality, wrong principle applied nor material fact overlooked by the trial Judge to warrant interference of this honourable court.

He further submitted that the maximum sentence for the offence of Aggravated Robbery under Section 286 of the Penal Code Act, is death and a sentence of 20 years is within the range of sentences meted by or deemed appropriate by this honourable court and the supreme court. He cited ***Ojangole Peter v Uganda; SCCA No. 34 of 2017***, where the Supreme Court found a sentence of 32 years' imprisonment imposed by the Court of Appeal on a convict of Aggravated Robbery as legal and appropriate.

He also cited ***Guloba Rogers v Uganda; CACA No. 57 of 2013***, where this Honourable Court considered a sentence of 35 years on a count of Aggravated Robbery as appropriate from which it deducted 1 year and 5 months spent om remand thus arriving at a sentence of 33 years and 7 months.

Also in ***Basikule Abdu v Uganda; CACA No. 516 of 2017***; where the trial Court meted out a sentence of 20 years' imprisonment in a case of Aggravated Robbery in which the victim was robbed of Shs. 200, 000/ and his clothes. This Honourable Court, while upholding the sentence of 20 years', found it not to be harsh as contended by the appellant.

Counsel thus invited this Court not to interfere with the discretion of the trial Judge and prayed that the conviction and sentence against the appellant is upheld and the Appeal dismissed.

Court's consideration

Ground 2

It is settled law that sentencing is a discretion of a trial court and an appellate court will only interfere with the sentence imposed by the trial court if it is evident that the court acted on a wrong principle or overlooked some material fact or if the sentence is manifestly harsh and excessive or too low. In **Kiwalabye Bernard v Uganda, Criminal Appeal No.143 of 2001** (unreported), the Supreme Court gave guidelines for when the appellate court may exercise its delicate discretion of tampering with a trial court's sentencing. Court had this to say:

> **"The appellate court is not to interfere with the sentence imposed by a trial court where that trial court has exercised its discretion on sentence, unless the exercise of that discretion is such that it results in the sentence imposed to be manifestly excessive or so low as to amount to a miscarriage of justice, or where the 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."**

In the instant case, looking at the sentencing decision on page 24 of the record of Appeal, the trial Judge stated:

> **"This Court has listened to the mitigation factors, such as the period of 4l/2 years on remand and the fact that convict is still a young man who can still reform and live a better life. Whereas those are pertinent, but as already noted since the offence is said to be rampant in the region by learned**

state Attorney, this Court cannot do other wise than a deterrent sentence. I can only spare convict death penalty. And thc sentence of 50 years imprisonment by the state may not assist the convict to reform.

All in all, instead of 25 years imprisonment, I remove the almost 5 years of remand and do hereby sentence you to servc 20 years imprisonment." (Sic)

From the above, it is not in question that the learned Judge paid attention to the mitigating factors before explaining why he would choose to give a deterrent sentence. On the actual sentence, he literally deducted the time the appellant had spent on remand and also gave reasons as to why he would not give the maximum penalty of death or even a term of 50 years since that could not assist the convict. He instead sentenced the appellant to 20 years' imprisonment.

It is our view that the learned trial Judge was actually lenient and gave reasons for the sentence he opted for. It would not be fair for counsel to argue that the learned Judge merely mentioned the mitigating factors. This ground lacks merit and should fail. We accordingly uphold the sentence of the trial Court and hereby dismiss this Appeal for lack of merit.

Dated at Fort Portal this 14th day of October 2022

Richard Buteera
Deputy Chief Justice

Irene Mulyagonja
Justice of Appeal

Eva K. Luswata
Justice of Appeal