

5

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CRIMINAL APPEAL NO. 274 OF 2015

LULE HAKIM:.....APPELLANT

VERSUS

10 **UGANDA:.....RESPONDENT**

[Appeal from the decision of the High Court holden at Entebbe (The Honourable Lady Justice Elizabeth Jane Alividza) dated the 24th day of July 2015 in Criminal Session Case No. 323 of 2012].

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

JUDGMENT OF THE COURT

20 This appeal is from the decision of the High Court of Uganda sitting at Entebbe in High Court Criminal Session Case No. 323 of 2012, in which Elizabeth Jane 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 and sentenced him to 20 years imprisonment.

5 The facts as established by the prosecution before the trial court were that the Appellant with others still at large on 3rd February 2012, at Entebbe in Wakiso District robbed Muhimbise Edson of cash shs. 600,000/=, Airtime worth shs. 100,000/= and at, before or after the said robbery used a deadly weapon to wit a gun on the said Muhimbise Edson.

10 With leave of court granted under *Section 132(1) (b)* of Trial on Indictments Act, the Appellant now appeals to the Court of Appeal of Uganda against sentence on the ground:

THAT the learned trial Judge erred in law and fact when she sentenced the appellant to 20 years imprisonment.

15 **Representation**

At the hearing of this appeal, the Appellant was represented by *Ms. Sarah Awelo*, learned Counsel on state brief while *Ms. Acio Caroline* Chief State Attorney appeared for the Respondent. The Appellant was in attendance via video link to Luzira Prison by reason of the restrictions put in place due to COVID 19
20 pandemic.

Both parties sought, and were granted, leave to proceed, by way of written submissions.

5 **Appellant's case**

It was submitted for the Appellant that the sentence of 20 years imprisonment passed by the learned trial Judge was harsh and excessive and that the trial court departed from the conventional rule of uniformity in passing sentences when sentencing the Appellant. Counsel referred court to **Abaasa Johnson v**
10 **Uganda, Criminal Appeal No. 033 of 2010**, for the provision that it is now settled that for the Court of Appeal, as a first appellate court, to interfere with the sentence imposed by the trial court which exercised its discretion, it must be shown that the sentence is illegal, or founded upon a wrong principle of the law; or where the trial court failed to take into account an important matter or
15 circumstance, or made an error in principle; or imposed a sentence which is harsh and manifestly excessive in the circumstances.

Counsel referred court to **Ouke Sam v Uganda Criminal Appeal No. 251 of 2002**, this court confirmed a sentence of 9 years imposed on the appellant for aggravated robbery.

20 Counsel also referred to **Adama Jino v Uganda Court of Appeal Criminal Appeal No. 050 of 2006**, where the Appellant had been sentenced to life imprisonment for aggravated robbery and this court reduced it to 15 years.

Further in **Kusemererwa and another v Uganda Court of Appeal Criminal Appel No. 0083 of 2010**, the Appellants had been sentenced to 20 years for

5 aggravated robbery where shs. 2,000,000/= was stolen and not recovered and this court reduced the sentence to 13 years.

Counsel prayed that this appeal be allowed and court be pleased to invoke its powers under section 11 of the Judicature Act Cap 11 to determine the appropriate sentence of 10 years.

10 **Respondent's reply**

In reply, it was submitted for the respondent that the sentence of 20 years for aggravated robbery by use of gun is not manifestly harsh and very lenient for a crime whose maximum sentence is death and the same should be maintained.

15 Counsel submitted that this court has power to vary a sentence passed by the lower court by either reducing it or increasing it and that this can be done where court exercises its discretionary powers if it is evident that the trial court acted on a wrong principle or overlooked some material factor and also if the sentence is manifestly excessive.

20 Counsel contended that notwithstanding the consistency principle in sentencing, it is dangerous to use sentences of other convicts in different cases as a parameter to determine fairness in another case because the circumstances of each case may dictate the sentence. Further that the sentences referred to by counsel were handed out a long time ago and since they were so lenient, they lacked a deterrent effect.

5 It was further contended that in this case two guns were used and people were injured in the course of the robbery. Counsel referred court to **Bogere Asimwe Moses and Another v Uganda, Supreme Court No. 039 of 2016**, where the conviction and sentence of 20 years for an appellant aged 23 years, with family responsibility and where there was no violence at the time of the offence.

10 Further in **Bakubye Muzamiru and Another v Uganda, Supreme Court Criminal Appeal No. 056 of 2015**, the Supreme Court upheld a sentence of 30 years in a conviction for aggravated robbery.

According to Counsel, the learned trial judge considered both the mitigating and aggravating factors before coming to a conclusion that the sentence of 20 years
15 was sufficient in the circumstances.

Counsel concluded that the sentence of 20 years' imprisonment be maintained.

Resolution

This is a first appeal and as such this Court is required under Rule 30(1)(a) of the Judicature (Court of Appeal Rules) Directions to re-appraise the evidence
20 and make its inferences on issues of law and fact while making allowance for the fact that we either saw nor heard the witnesses. See: **Pandya v R [1957] E.A 336, Bogere Moses and another v Uganda, Supreme Court Criminal Appeal No. 1 of 1997 and Kifamunte v Uganda, Supreme Court Criminal Appeal No. 10 of 1997.**

5 It is indeed now settled that for the Court of Appeal, as a first appellate court, to interfere with the sentence imposed by the trial court which exercised its discretion, it must be shown that the sentence is illegal, or founded upon a wrong principle of the law; or where the trial court failed to take into account an important matter or circumstance, or made an error in principle; or imposed a
10 sentence which is harsh and manifestly excessive in the circumstances. **See: Kamy Johnson Wavamuno v Uganda, Supreme Court Criminal Appeal No. 016 of 2000 (unreported); Kiwalabye Bernard v Uganda, Supreme Court Criminal Appeal No. 143 of 2001 (unreported) and Kalyango Achileo and Another v Uganda, Court of Appeal Criminal Appeal No. 637 of 2015.**

15 Bearing in mind the above principles of law, we shall proceed to consider the singular ground of appeal on the alleged error by the learned trial Judge to sentence the Appellant to 20 years' imprisonment.

We have reviewed the Judgment of the trial Court and noted further that while sentencing the appellant, at page 57 of the Record of Appeal, the learned trial
20 judge stated thus:

“As already stated in this court before, aggravated robbery is on the increase, there is need to send a message to the public that once convicted for a robbery, you will serve a deterrent sentence.

*However, you are a first offender and the physical injuries inflicted
25 were not so grave, therefore, I sentence you to 23 years*

5 *imprisonment. I will reduce three years as your remand period leaving a balance of 20 years.”*

From the above, it is clear that the trial court considered the mitigating and aggravating factors before sentencing the Appellant to 20 years’ imprisonment. We have considered both the mitigating and aggravating factors in this case.

10 We noted Counsel for the Appellant’s submission that this court is bound to follow the principle of “parity” and “consistency” while sentencing, while bearing in mind that the circumstances under which the offences are committed are not necessarily identical.

Guideline No. 6(c) of the (Sentencing Guidelines for Courts of Judicature)

15 **(Practice) Directions, 2013** provides that:

“Every court shall when sentencing an offender take into account the need for consistency with appropriate sentencing levels and other means of dealing with offenders in respect of similar offences committed in similar circumstances.”

20 In **Aharikundira Yustina v Uganda, Supreme Court Criminal Appeal No. 027 of 2015** this court held that:

“An appellate court must bear in mind that it is setting guidelines upon which lower courts shall follow while sentencing. According to the doctrine of stare decicis, the decisions of appellate courts are

5 *binding on the lower courts. Precedents and principles contained
therein act as sentencing guidelines to the lower courts in cases
involving similar facts or offences since they provide an indication on
the appropriate sentence to be imposed.”*

We are in agreement with the above passage. It is the duty of this court while
10 dealing with appeals regarding sentencing to ensure consistency with cases that
have similar facts. Consistency is a vital principle of a sentencing regime. It is
deeply rooted in the rule of law and requires that laws be applied with equality
and without unjustifiable differentiation.

There is no hard and fast rule that an appellate Court cannot pass a similar
15 sentence to the one passed by Court in an earlier decision.

In **Rutabingwa James v. Uganda Court of Appeal Criminal Appeal No. 57 of
2011**, confirmed an 18 year sentence for aggravated robbery. While confirming
that sentence, this Court noted that the Appellant in that case had spent close
to 5 years on remand. It also considered the injuries inflicted upon the victim.

20 According to section 286 (2) of the Penal Code Act Cap 120, the maximum
penalty for the offence of Aggravated Robbery is death. However, this punishment
is by sentencing convention reserved for the most extreme circumstances of
perpetration of such an offence such as where it has lethal or other extremely
grave consequences. Examples of such circumstances relevant to this case are
25 provided by **Regulation 20 of The Constitution (Sentencing Guidelines for**

5 **Courts of Judicature) (Practice) Directions, 2013** to include; the use and nature of weapon used, the degree of meticulous pre-meditation or planning, and the gratuitous degradation of the victim like multiple incidents of harm or injury or sexual abuse.

10 In **Ninsiima v. Uganda Crim. Appeal No. 180 of 2010**, the Court of appeal opined that these guidelines have to be applied taking into account past precedents of Court, decisions where the facts have a resemblance to the case under trial.

From the above, it is clear that deadly weapons were used but no life was lost. However, the trial court considered the mitigating and aggravating factors before
15 sentencing the Appellant to 20 years' imprisonment. The sentence passed was neither excessive nor harsh in the circumstances. Additionally, by passing this sentence, the learned trial Judge followed the sentencing principle regarding uniformity of sentences in similar cases.

We find no merit in the appeal and it is accordingly dismissed. The appellant
20 should continue to serve the sentence as passed by the trial Court.

We so order.

Dated at Kampala this.....^{11th}.....day of^{February}..... 2022.

.....
RICHARD BUTEERA
DEPUTY CHIEF JUSTICE

25

5

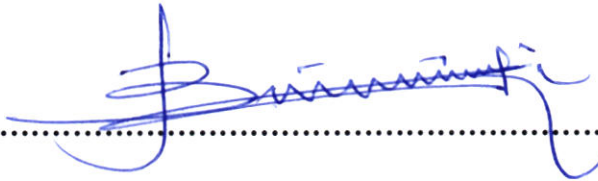


.....

ELIZABETH MUSOKE

JUSTICE OF APPEAL

10



.....

CHEBORION BARISHAKI

JUSTICE OF APPEAL

15