

**THE REPUBLIC OF UGANDA  
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA  
CRIMINAL APPEAL NO. 0175 OF 2020**

**ASEA DENIS:.....APPELLANT**

**VERSUS**

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

*(Appeal from the decision of the High Court of Uganda at Kampala before Mubiru, J. delivered on 7<sup>th</sup> February, 2019 in Criminal Session Case No. 1234 of 2016)*

**CORAM: HON. LADY JUSTICE ELIZABETH MUSOKE, JA  
HON. MR. JUSTICE CHRISTOPHER GASHIRABAKE, JA  
HON. LADY JUSTICE EVA K. LUSWATA, JA**

**JUDGMENT OF THE COURT**

**Background**

On 7<sup>th</sup> February, 2019, the High Court (Mubiru, J.) convicted the appellant of the offence of **Simple Robbery** contrary to **Section 285 and 286 (1) (b)** of the **Penal Code Act, Cap. 120**. The appellant was sentenced to 7 years and 4 months imprisonment.

The decision of the High Court followed the trial of the appellant on an indictment that alleged that he, along with others still at large, had on the 17<sup>th</sup> day of October, 2015 at Rubaga in Kampala District robbed Nziba Abdu (the victim) of his Motorcycle Reg. No. UEH 987U Bajaj Boxer, and at the time of the robbery, used a deadly weapon, to wit, an iron bar on the victim.

The facts of the case, according to the findings of the trial Court, can be summarized as follows. The victim lived at Lungujja, Lubaga Division in Kampala District and worked as a security guard at the Tanzania High Commission in Nakasero. At around 6.30 a.m on 17<sup>th</sup> October, 2015, the victim was riding his motorcycle from his home to his work place when, on reaching Pope Paul Memorial Centre, he noticed that a motor vehicle was trailing him. The driver of the motor vehicle signaled with the indicators for the victim to stop. The victim stopped at the road side and the motor vehicle stopped just behind him. Two men then disembarked from the motor vehicle and one struck the victim with an object that cracked the helmet he was



wearing and also caused it to fall off. One of the men picked the helmet and the other picked the motorcycle and made off with it. The victim reported to Nakulabye Police Station. The motorcycle stolen from the victim was subsequently tracked and found with the appellant in Masindi District. Police officers from Nakulabye Police Station went to Masindi and returned to Kampala with the appellant, together with the stolen motorcycle, and took him to Old Kampala Police Station. The motorcycle was also kept at that Police Station. The appellant was subsequently charged with aggravated robbery for participating in the attack on the victim. Despite giving evidence denying participating in the attack, the learned trial Judge believed the prosecution evidence implicating the appellant. The learned trial Judge however convicted the appellant of a minor and cognate offence of simple robbery as he was not satisfied that a deadly weapon was used in the attack on the victim. The appellant was sentenced as stated earlier.

The appellant, being dissatisfied with the decision of the learned trial Judge now appeals to this Court on the following grounds:

- "1. The learned trial Judge erred in law and fact when he failed to appraise evaluate to adequate scrutiny prosecution evidence of PW1 illegal claims of lacked requisite evidential value of motorcycle alongside defence evidence to draw correct inferences of fact of appellant not guilty thereby wrongly convicted appellant of offence of simple robbery (sic).**
- 2. The learned judge erred in law and fact when he imposed upon appellant custodial sentence of 7 years without deducting remand period."**

The respondent opposed the appeal.

### **Representation**

At the hearing, Mr. Seth M Rukundo, learned counsel appeared for the appellant. Ms. Ann Kabajungu, learned Chief State Attorney in the Office of the Director Public Prosecutions appeared for the respondent. The appellant followed the hearing via Zoom Video Technology, while he remained at the prison facility where he was incarcerated.





The Court, at the hearing, adopted the written submissions filed in support of the respective cases for either side, and the same have been considered in this judgment.

### **Appellant's submissions**

Counsel for the appellant argued the two grounds separately.

#### **Ground 1**

Counsel contended that the learned trial Judge should not have convicted the appellant of the offence of simple robbery as the prosecution failed to prove certain ingredients of the offence, namely 1) that the victim owned the stolen motorcycle; and 2) the value of the stolen motorcycle, beyond reasonable doubt. He submitted that the ownership of the stolen motorcycle was uncertain as the log book was registered in the names of another person and not the victim. Counsel contended that whereas the victim alleged to have signed an agreement to purchase the motorcycle from the registered owner, that agreement was not tendered in evidence. On the failure to prove the value of the motorcycle, counsel submitted that because the prosecution evidence did not specify the value of the motorcycle, the reasonable inference is that it had no value and therefore did not amount to property capable of being stolen.

Furthermore, counsel contended that the learned trial Judge should have stayed the trial of the appellant, pursuant to the Human Rights (Enforcement) Act, 2019 and conducted an inquiry into allegations that the appellant's rights were violated on the day of his arrest. Counsel submitted that PW3 Sergeant Nyakira testified that the appellant was assaulted by a mob which amounted to a violation of his right not to be subjected to torture that is guaranteed under **Article 44 (a)** of the **1995 Constitution**. Counsel further submitted that the learned trial Judge should also have rejected the police statements taken while the appellant was admitted in hospital after sustaining injuries when he was assaulted by the mob, as the same were irregular for having been recorded while the appellant was in illegal detention. Counsel contended that failure to stay proceedings was an illegality that should lead to quashing of the appellant's conviction.

#### **Ground 2**

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Counsel submitted that the sentence imposed on the appellant, of 7 years and 4 months imprisonment, was illegal, as the learned trial Judge failed to deduct the remand period while imposing that sentence contrary to the requirement under the provisions of **Article 23 (8)** of the **1995 Constitution**.

Counsel also submitted that the sentence imposed on the appellant was too long and did not afford him a chance to reconcile with the community.

### **Respondent's submissions**

Counsel for the respondent also argued the grounds separately.

#### **Ground 1**

Counsel began her submissions by submitting that ground 1 offends the requirements under **Rule 66 (1)** of the **Rules of this Court**, as it does not specify the points in the decision of the learned trial Judge that were wrongly decided. Counsel urged this Court to strike out the ground of appeal as was done in the case of **Sseremba vs. Uganda, Criminal Appeal No. 480 of 2017 (unreported)** where this Court struck out a similar drafted ground.

Counsel also submitted on the merits in case this Court were to maintain ground 1. She submitted that the ingredients of the offence of simple robbery are as follows: 1) that there was theft; 2) that there was use or threatened use of violence during the commission of the theft; and 3) the accused participated in the theft. She further submitted that **Section 254** of the **Penal Code Act, 120** provides that theft is committed when a person fraudulently and without claim of right takes anything capable of being stolen from the general or special owner thereof. Further, that **Section 253 (1)** of the **Penal Code Act** provides that every inanimate thing which is the property of any person and which is movable, is capable of being stolen. Counsel contended that the prosecution evidence proved all the ingredients of the offence of simple robbery beyond reasonable doubt. The victim testified that he was attacked by two assailants including the appellant who assaulted him with a weapon and stole his motorcycle. The victim testified that he identified the appellant. Further, counsel pointed out that police officers called for the prosecution testified that the victim reported the attack and also that they recovered the stolen motorcycle from Masindi District in possession of the appellant, and that the learned trial Judge applying the

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doctrine of recent possession as articulated in the case of **Mudasi vs. Uganda, Supreme Court Criminal Appeal No. 3 of 1998 (unreported)** found the appellant guilty of participating in the attack on the victim. Counsel contended that the prosecution evidence proved the case of simple robbery against the appellant and urged this Court to uphold the conviction.

## **Ground 2**

Counsel submitted that the appellant's submission that the learned trial Judge did not deduct the period he spent on remand was incorrect as the learned trial Judge had done so. Counsel also submitted that the sentence of 7 years and 4 months imprisonment was not manifestly harsh and excessive for simple robbery and in another cases of **Muligande vs. Uganda, Criminal Appeal No. 39 of 2013 (unreported)**, a longer sentence of 8 years was imposed for simple robbery. She contended that there was no justification for this Court to interfere with the sentence imposed on the appellant.

## **Resolution of the Appeal**

We have carefully studied the record, and considered the submissions of counsel for either side and the law and authorities referred to therein. We have also considered other applicable authorities that were not cited.

This is a first appeal from a decision of the High Court. We are therefore mindful that 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 draw inferences of fact. In **Uganda vs. Ssimba, Supreme Court Criminal Appeal No. 37 of 1995 (unreported)**, it was held that it is the duty of the first appellate Court to give the evidence on record as a whole that fresh and exhaustive scrutiny which the appellant is entitled to expect, and draw its own conclusions of fact.

We shall resolve each ground separately.

## **Ground 1**

Counsel for the respondent raised a preliminary objection that ground 1 was drafted in a manner that contravened **Rule 66 (1)** of the Rules of this Court



and ought to be struck out. Counsel for the appellant did not respond to this objection. It is true that Rule 66 (1) requires that grounds of appeal be specific as to the points of objection to the decision appealed from. Ground 1 of appeal not only fails to specify the points of objection but is also unintelligible. It was drafted as follows:

**"The learned trial Judge erred in law and fact when he failed to appraise evaluate to adequate scrutiny prosecution evidence of PW1 illegal claims of lacked requisite evidential value of motorcycle alongside defence evidence to draw correct inferences of fact of appellant not guilty thereby wrongly convicted appellant of offence of simple robbery."**

We are also mindful that the blame for the manner of drafting ground 1 lies with counsel who was assigned to represent the appellant on State Brief. Thus, it will not be in the interests of justice to strike out the ground. Instead, we shall consider the points discernable from the submissions of counsel for the appellant and decide whether they have any merit. We therefore opt against striking out ground 1.

Counsel for the appellant, in the submissions on ground 1, raised various points which we shall consider in turn. First, counsel submitted that two essential ingredients of the offence of simple robbery were not proven against the appellant. These ingredients, according to counsel are: 1) that the stolen motorcycle belonged to the victim; and 2) the value of the stolen motorcycle. We note that the offence of simple robbery is provided for under Sections 285 and 286 (1) of the Penal Code Act, Cap. 120. **Section 285** provides:

**"285. Definition of robbery.**

**Any person who steals anything and at or immediately before or immediately after the time of stealing it uses or threatens to use actual violence to any person or property in order to obtain or retain the thing stolen or to prevent or overcome resistance to its being stolen or retained commits the felony termed robbery."**

**Section 286 (1) (b)** provides:

**"286. Punishment for robbery.**

**(1) Any person who commits the felony of robbery is liable—**

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**(b) on conviction by the High Court, to imprisonment for life."**

In our view, the ingredients of the offence of simple robbery are that:

- "1. There was theft of property.**
- 2. During the commission of the theft, the perpetrator used of threatened to use actual violence on the victim or property.**
- 3. The perpetrator was the accused person."**

The learned trial Judge found, after thoroughly assessing the evidence, that the above ingredients of simple robbery were proven against the appellant. Counsel for the appellant does not question the learned trial Judge's assessment of the evidence. He only seeks to read the ingredients we identified earlier into the offence of simple robbery. We find that it is wrong for him to do so. A conviction for simple robbery rests on proof of theft of property in possession of another, whether that person is the registered owner or not. Thus, in the present case, it was unnecessary to adduce evidence, whether of the logbook or a sale agreement, to prove the owner of the stolen motorcycle. It sufficed that the victim testified that he was in actual possession of the motorcycle at the time it was stolen.

We also believe it was not mandatory to adduce evidence of the price of the stolen motorcycle. That evidence would have been necessary for purposes of determining compensation, which was unnecessary as the stolen motorcycle was recovered and returned to the victim. Surely, it cannot be that lack of valuation of a motorcycle meant that it had no value and did not qualify as property. We find these submissions misconceived and we reject them.

The second point advanced by counsel for the appellant is that the trial of the appellant should have been stayed under the Human Rights (Enforcement) Act, 2019 owing to allegations of violation of the appellant's rights. We would reject this point as well. The appellant's trial commenced on 18<sup>th</sup> December, 2018 and was concluded on 7<sup>th</sup> February, 2019 yet the Human Rights (Enforcement) Act, 2019 came into force on 31<sup>st</sup> March, 2019 after the President assented to it. The learned trial Judge was therefore under no obligation to apply a law that had not come into force. In any case, under the Human Rights (Enforcement) Act, 2019, a Court is expected to be moved by an application before it can investigate human rights violations

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and grant redress where necessary. No such application was made before the learned trial Judge.

The learned trial Judge carefully and thoroughly scrutinized the evidence before concluding that the appellant was one of two men who attacked the victim in Kampala District, and assaulted him before stealing his motorcycle. The motorcycle was subsequently tracked and found in possession of the appellant in Masindi District. We cannot fault the learned trial Judge's assessment of the evidence and we find that it proved, beyond reasonable doubt, that the appellant committed the offence of simple robbery of which he was convicted.

Ground 1 of the appeal must fail.

## **Ground 2**

Ground 2 challenges the sentence imposed on the appellant. We must emphasize that this Court can only interfere with a sentence imposed by the trial Court in limited circumstances, such as where the sentence is illegal or is harsh and manifestly excessive. **See: Kakooza vs. Uganda, Supreme Court Criminal Appeal No. 17 of 1993 (unreported)**. A sentence is illegal if it was passed contrary to any law. In the present case, it has been submitted that contrary to **Article 23 (8) of the 1995 Constitution**, the learned trial Judge omitted to deduct the period the appellant spent on remand from the sentence he deemed appropriate. This cannot be true. The learned trial Judge, in relevant part, stated while sentencing the appellant as follows:

**"It is mandatory under Article 23 (8) of the Constitution of the Republic of Uganda, 1995 to take into account the period spent on remand while sentencing an accused. Regulation 15 (2) of The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013, requires the court to "deduct" the period spent on remand from the sentence considered appropriate, after all factors have been taken into account. This requires a mathematical deduction by way of set-off. From the earlier proposed term of eleven (11) years' imprisonment arrived at after consideration of the mitigating factors in favour of the convict. I note that the convict has been in custody since 29<sup>th</sup> October, 2015, a period of three years and four months. I therefore sentence the convict to a term of imprisonment of seven (7) years and four (4) months to be served starting today."**

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The learned trial Judge clearly considered and deducted the period of 3 years and 4 months that the appellant spent on remand from the sentence of 11 years he deemed appropriate, before coming to a sentence of 7 years and 4 months imprisonment. There even appears to be an arithmetical error which resulted in the appellant getting a shorter sentence than he should have got. We therefore do not see the basis for the contention of counsel for the appellant that the remand period was not considered and we reject it.

The other contention regarding sentence is that the sentence imposed on the appellant was too long and did not afford him an opportunity to reconcile with his community. We find that this contention cannot afford a basis for this Court to interfere with the sentence of the learned trial Judge, and we reject it.

Ground 2 must also fail.

In conclusion, for the above reasons, we find no merit in the appeal and we dismiss it.

**We so order.**

Dated at Kampala this 18<sup>th</sup> day of Dec 2022.

  
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**Elizabeth Musoke**

Justice of Appeal

  
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**Christopher Gashirabake**

Justice of Appeal

  
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**Eva K. Luswata**

Justice of Appeal