THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CRIMINAL APPEAL NO. 270 OF 2015

MATOVU ASHIRAF::APPELLANT

VERSUS

UGANDA::RESPONDENT

[Appeal from the decision of the High Court holden at Entebbe (The Honourable Lady Justice Elizabeth Jane Alividza) dated the 17th day of July 2015 in Criminal Session Case *No. 084 of 2013).*

CORAM: HON. MR. JUSTICE RICHARD BUTEERA, DCJ

HON. LADY JUSTICE ELIZABETH MUSOKE, JA

HON. MR. JUSTICE CHEBORION BARISHAKI, JA

<u>JUDGMENT OF THE COURT</u>

This appeal is from the decision of the High Court of Uganda sitting at Entebbe in High Court Criminal Session Case No. 084 of 2013, in which Elizabeth Jane Alividza, J convicted the Appellant of the offence of Aggravated Robbery contrary to *Section 285 and 286(2)* of the Penal Code Act Cap 120 and sentenced him to 26 years imprisonment.

lished by the prosecution before the trial court were that on

The facts 012, the Appellant and others still at large at Nabbingo Tega Zone the District, while armed with a gun and a knife robbed Namara Annet, of ,000/= and two mobile phones both valued at shs. 250,000/=.

Appellant now appeals to the Court of Appeal of Uganda on grounds couched in the Amended Memorandum of Appeal dated 2nd September 2021 as follows:

1. *THAT the learned trial Judge erred in law and fact when she convicted the Appellant relying on prosecution evidence full of contradictions and inconsistencies.*

2. *THAT the learned trial Judge erred in law and fact when she passed a sentence of 26 years imprisonment which is illegal, harsh and excessive thereby occasioning a miscarriage of justice.*

Representation

At the hearing of this appeal the Appellant was represented by *Mr. Richard Kumbuga,* learned Counsel on state brief while *Ms. Emily Mutuuzo Ssendawula Senior State Attorney* represented 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 pandemic. Both parties sought, and were granted, leave to proceed, by way of written submissions.

Appellant's case

On the 1st ground, Counsel for the Appellant submitted that the ingredient of participation of the Appellant in the commission of the alleged offence was not made out against the Appellant and it was erroneous for the learned trial Judge to decide otherwise hence occasioning a miscarriage of justice.

According to Counsel, the evidence of PW1 Namara Annet and PW2 Mugisha Kennedy which was relied upon to prove that they had effectively identified the Appellant on the fateful night was marred with inconsistencies and contradictions and as such these witnesses were deliberately untruthful and as such the trial Judge wrongly relied on their testimonies.

Counsel contended that PW1 had testified that on the fateful night she returned home, parked her car and asked PW2 to wash it. Whilst moving into the house, she saw two men holding PW2 whom they had tied having two guns and a knife. The said men locked PW2 in the bathroom and ordered her to give them money and other valuables which she complied with. She stated that she managed to identify the Appellant as one of the robbers since he had previously worked at her place as a casual laborer.

Counsel further contended that contrary to the testimony of PW1, PW2 stated that whilst washing PW1's car, two people armed with guns came toward him, he inquired as to who they were but they threatened to shoot him. They tied him up, led him to the house where he knocked and when the occupants opened, he was forcefully pushed into the bathroom and tied up. He also testified that he

knew the Appellant since he had been working at the home for about three months prior and that with the aid of light, he managed to identify his feet.

Counsel contended that the learned trial judge placed a lot of importance on the identification of the Appellant by both PW1 and PW2 whereas they were untruthful because of the major inconsistencies in their evidence.

Counsel argued that it was questionable that both PW1 and PW2 did not mention the Appellant's name when they made their police statements and yet they had intimated that they had known him. More specifically, that PW2 testified that he had known the Appellant for more than 3 months and yet when approached by the robbers, he questioned who they were.

Counsel also argued that PW3 testified that the Appellant was arrested because Namukose Fatimah, one of the maids at the Complainant's home had seen him peep over the fence and she recognised him as one of the robbers and yet she was not called as a witness. According to Counsel, both PW1 and PW2 ought to have mentioned the involvement of the Appellant from the onset instead of waiting for him to peep over the fence, a week later.

It was also submitted for the appellant that both PW1 and PW2 gave contradictory evidence regarding the appellant`s hair when PW1 testified that he had tinted gold hair on the night of the attack. PW2 testified that the Appellant had a bold head though tinted while PW3 stated that at the time of arrest, the Appellant had golden tinted hair in the middle and black hair on the sides.

Counsel for the Appellant also submitted that according to PW1, she saw four people who came with PW2 towards the house and the Appellant was holding a knife while PW1 testified that he only saw two assailants armed with guns. Counsel referred court to **Candiga Swadick v Uganda, Court of Appeal Criminal Appeal No. 023 of 2012** for the dicta that major contradictions and inconsistences in evidence will usually result in the witness' evidence being rejected unless they can be explained away while minor inconsistences will lead to the evidence being rejected if they point to deliberate untruthfulness on part of the witness.

Counsel concluded that, had the trial court addressed its mind to all these contradictory facts, the Judge would have reached a conclusion that the Appellant was not identified at all during the said robbery and he was being framed.

On ground 2, it was submitted for the Appellant that the sentence of 26 years passed by the learned trial Judge was harsh and excessive in the circumstances since the trial court did not take into account the mitigating factors thereby departing from the conventional rule of uniformity in passing sentences.

Counsel referred court to the decision of the Supreme Court in **Aharikundira Yustina v Uganda SCCA No. 027 of 2005** for the dicta that consistency is a vital principle of the sentencing regime and that it is deeply routed in the rule of

law and requires that laws be applied with equality and without unjustifiable differentiation.

Counsel also referred us to **PTE Kushemererwa and Another v Uganda, Criminal Appeal No. 027/ 2005,** where the Appellants had been convicted with three counts of aggravated robbery and they were sentenced to 20 years imprisonment on each count but on appeal, the sentences were reduced to 13 and 12 years respectively.

Counsel submitted that in this case, the Appellant was a first-time offender aged 19 years at the time of commission of the office. He was a young man capable of reforming and being useful to society, and had the learned trial Judge addressed her mind to these mitigating factors and the principle of uniformity, she would have arrived at a more lenient sentence.

Counsel prayed that this appeal be allowed and court be pleased to set aside the sentence and substitute it with 10 years considering the time that the Appellant has spent in lawful custody.

Respondent's reply

In reply, Counsel for the Respondent submitted that the alleged contradiction between the testimony of PW1 and PW2 was considered by the trial Judge and resolved. PW1 had testified that she saw four attackers with guns and that the Appellant had a knife. PW2 on the other hand told court that there were two

attackers with guns. Counsel referred court to pages 58 and 59 of the Record of Appeal where the Judge relied on PW1's testimony that some of the attackers went to her ATM to withdraw money using a wrong PIN which she had given them and when it failed they called the ones who had stayed at the house, who demanded for the correct PIN at gun point. She gave the PIN and her money was withdrawn. According to Counsel this explained the minor inconsistency regarding the guns.

Counsel further submitted that PW2 truthfully testified in cross examination that he saw two attackers because when they attacked him, one robber was in front of him and another behind him. The attackers forced him to knock on the door and upon opening for them they entered the house, bound his arms and legs and locked him up in the bathroom. He did not come out of there until the robbers were gone.

Counsel contended that PW1 was the major witness because after locking up PW2, had to endure the ordeal with the rest of the robbers. In Counsel's view, this was not a contradiction because PW2's evidence on the number of attackers was not shaken during cross examination and neither was PW1's testimony that she saw four people. At no point did any of them increase or reduce the number of people they saw and they were sure.

Regarding the contradiction on the hair of the Appellant, PW1 testified that at the time of the robbery the Appellant had tinted gold hair while PW2 testified

that he had a bald head though tinted while PW3 testified that he had gold hair in the middle and black hair on the sides at the time of arrest. In reply, it was submitted for the Respondent that neither of the witnesses testified that the Appellant had long hair and so it could have been very short or near bald but tinted. Further, that the Appellant had testified that he had tinted hair at the time of his arrest.

Counsel contended that the tinted hair was not the only feature used to identify the Appellant. Counsel referred to the testimony of PW2 who stated that he was able to identify the Appellant by the missing toe nails. This was not rebutted by the Appellant in his defence. According to Counsel, the fact that PW2 said that the Appellant had a bold tinted head is minor and does not go to the root of matter, and as such, it suffices that all the above pieces of evidence point to the fact that the Appellant had tinted hair at the time of the robbery and was properly identified by the witnesses.

Counsel argued that the Appellant's argument that he was living in that village and that everyone knew him as a person with tinted hair and missing toes was an afterthought which does not in any way discredit the evidence of the witnesses who identified him.

Counsel submitted that the learned trial Judge evaluated the evidence in its entirety and found PW1 and PW2 to be truthful and consistent witnesses and they corroborated each other on the major details. In the alternative, counsel

submitted that if this court finds that there were inconsistencies and contradictions, the same were minor, they did not go to the root of the case and there was no deliberate untruthfulness on the part of the witnesses.

Counsel argued that even though, Counsel for the Appellant raised a ground on inconsistencies, he made submissions regarding the issue of identification of the Appellant by court which was not a ground of appeal. Nonetheless, Counsel referred court to the decision of the Supreme Court in **Bogere Moses and Another v Uganda** cited in **Opolot Justine and Another v Uganda, Criminal Appeal No. 155 of 2009** on identification for the proposition that where identification is made in satisfactory conditions by a person who knew the accused before, a court can safely convict even though there is no other evidence to support the identification evidence provided the court cautions itself.

Counsel contended that the learned trial Judge cautioned herself. She evaluated the evidence of PW1 and PW2 independently, assessed the demeanor of the witnesses and found them to be truthful and reliable. According to Counsel, the submission for the Appellant that PW1 and PW2 failed to mention the Appellant in their statements at police did not arise at trial. It is a mere submission from the bar, the police statements were not part of the record and the contents thereof are unascertainable and the learned trial Judge cannot be faulted for an issue that was not part of the record.

Counsel referred court to the decision of **Candiga Swadick v Uganda** (supra) which was cited with approval by the Supreme Court in **Mureeba Janet and 2 Others v Uganda Criminal Appeal No. 013 of 2003,** for the dicta that inorder for a police statement to be treated as evidence, it must be properly proved and admitted in evidence unless the authenticity of the statement is not challenged.

Counsel argued that on the issue of the failure to bring Namukose the maid to testify, this did not occasion any miscarriage of justice on the Appellant because PW1 and PW2 positively identified the Appellant at the time of the robbery. Counsel referred to **section 133 of the Evidence Act Cap 6,** for the proposition that no particular number of witnesses shall in any case be required for proof of any fact.

Regarding the sentence, it was Counsel's contention that sentencing is the discretion of a trial judge and that under **Sections 285 and 286 (2) of the Penal Code Act Cap 120**, the maximum sentence for a conviction arising from the offence of aggravated robbery is death. Further that the starting point for such conviction is 35 years per the **Constitution Sentencing Guidelines for Courts of Judicature (Practice) Directions, Legal Notice No. 008/2013**.

Counsel submitted that the trial court considered the aggravating and mitigating factors in the case and the four years which the Appellant had spent on remand. The trial Judge gave her reasons for sentencing the Appellant to 30 years and

accordingly she exercised her discretion judiciously within the precincts of the law.

Counsel relied on the Supreme Court decision of **Bakubye Muzamiru and Another v Uganda, SCCA No. 056 of 2015** where the appellants were contesting harshness of sentence of 40 years for murder and 30 years for aggravated robbery and the court held that the court has power to pass appropriate sentences as long as they do not exceed the maximum sentence provided by law. The sentences herein were maintained.

Counsel argued that the sentence of 30 years was lenient in the circumstances and that the learned trial Judge exercised her discretion judiciously. Counsel invited court not to interfere with the sentence.

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 and make its inferences on issues of law and fact while making allowance for the fact that we neither 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.**

It is trite law that an accused person is convicted on the strength of the prosecution case and not on the weakness of the defence. **See: Israel Epuku s/o**

Achouseu v R [1934] EACA 166 and Akol Patrick & Others v Uganda, Court of Appeal Criminal Appeal No. 060 of 2002.

Bearing in mind the above principles of law, we shall proceed to consider the first ground of appeal on the alleged error by the learned trial Judge when she convicted the Appellant relying on prosecution evidence full of contradictions and inconsistencies.

The law on contradictions is settled. In **Twinomugisha Alex and two others v. Uganda, Supreme Court Criminal Appeal No. 35 of 2002**, it was stated thus:

> *"It is settled law that grave inconsistencies and contradictions unless satisfactorily explained, will usually but not necessarily result in the evidence of a witness being rejected. Minor ones unless they point to deliberate untruthfulness will be ignored.*
>
> *The gravity of the contradiction will depend on the centrality of the matter it relates to in the determination of the key issues in the case. What constitutes a major contradiction will vary from case to case. The question always is whether or not the contradictory elements are material, i.e. "essential" to the determination of the case. Material aspects of evidence vary from crime to crime but, generally in a criminal trial, materiality is determined on basis of the relative importance between the point being offered by the contradictory*

evidence and its consequence to the determination of any of the elements necessary to be proved.

It will be considered minor where it relates only on a factual issue that is not central, or that is only collateral to the outcome of the case."

See also **Alfred Tajar v. Uganda, EACA Cr. Appeal No.167 of 1969, Uganda v. F. Ssembatya and another [1974] HCB 278, Sarapio Tinkamalirwe v. Uganda, S.C. Criminal Appeal No. 27 of 1989, and Uganda v. Abdallah Nassur [1982] HCB).**

It was submitted for the Appellant that the prominent contradictions and inconsistencies in the prosecution case included the discrepancy in the number of attackers whereby PW1 testified that there were 4 attackers with guns and PW2 testified that there were 2 attackers with guns; the discrepancies in the description of the hair of the Appellant and the failure of the witnesses to mention the name of the Appellant as one of the attackers in their police statements.

While evaluating this evidence and ascertaining whether or not the Appellant participated in the commission of the offence, on pages 7-13 of her Judgment, the learned trial Judge had this to say:

"PW1 and PW2 stated that they recognised the Accused person as being one of the robbers...The Accused had once worked in her compound for 2-3 months...

The Accused's evidence would be credible but for the evidence of PW1 and PW2 who positively recognised the Accused person as one of the robbers. Court believed them and found that they were consistent and corroborated each other on major details. Therefore, I find that the Prosecution has proved that the accused participated in the commission of the offence."

PW 1, Namara Annet in her examination in chief testified that:

I saw four attackers with guns. The Accused was not holding a gun, he had a knife.

...So when he removed the mask, I got scared, I thought he was going to shoot me so the one that was in the corner told him that put back the mask immediately. So he said all of you, down, down, down and by that time he had tinted hair.

At page 19-20 of the Record of Appeal, PW2 Mugisha Kennedy, testified thus:

He had a bald head although he had tinted it, he was putting on flats in his feet, as they made me lay down, he stood near me and I closely saw the sandals he was wearing. He didn't have nails in his feet. The big toe of one foot didn't have a nail.

At page 24 of the Record of Appeal, PW2 stated in cross examination that:

The other robbers came after I had been pushed to the bathroom but for me I saw only those two.

We have reviewed the evidence on the lower Court record and the analysis of the evidence by the trial Judge as above and findings of the trial court regarding the same. As submitted by Counsel for the Appellant, PW1 testified that she saw four attackers with guns and that the Appellant had a knife. PW2, however, told court that there were two attackers with guns. According to counsel, this was a major inconsistency that should have been resolved in favour of the Appellant.

While resolving this issue, the learned trial Judge at pages 56 -57 of the Record of Appeal based on PW1's testimony that some two attackers were inside the house, one with a gun watching over the people in the corner and the Appellant with a knife searching drawers for money. She testified further that she was forced to give her ATM to one attacker who took it to someone outside and one of the attackers went to her ATM to withdraw money using a wrong PIN which she had given them and when it failed, they called the ones who had stayed at the house. These ones demanded for the correct PIN at gun point which she gave and her money worth UGX. 150,000/= was withdrawn and stolen". According to the Judge, this planning and execution of the offence could not have been executed by only two attackers and she chose to believe PW1.

Our finding is that the learned trial judge correctly evaluated this evidence and explained the inconsistency between PW1 and PW2's testimonies regarding the

number of attackers. As correctly submitted by Counsel for the Respondent, PW2 truthfully testified in cross examination that he saw two attackers because when they attacked him, one robber was in front of him and another behind him. Further that the attackers forced him to knock on the door and upon opening for him they entered the house, bound his arms and legs and locked him up in the bathroom with running water, and he did not come out of there until the robbers were gone.

We find that the inconsistency regarding the number of attackers was minor. The witnesses withstood cross examination and each maintained what they had witnessed. Indeed, at no point did any of them increase or reduce the number of people they saw and they were sure, truthful and consistent as found by the learned trial judge.

Regarding the contradiction on the hair of the Appellant, PW1 testified that at the time of the robbery the Appellant had tinted gold hair while PW2 testified that he had a bald head though tinted and PW3 testified that he had gold hair in the middle and black hair on the sides at the time of arrest. This evidence in our view, related to identification of the Appellant. We noted that no ground of appeal was raised regarding identification and from the review of the record the Appellant conceded that he had tinted hair at the time of his arrest.

We find the differences to be minor and incapable of going to the root of matter since the Appellant was correctly identified as found by the learned trial Judge.

Had Counsel for the Appellant wished to dispute identification of the Appellant, he ought to have raised this as a ground of appeal on its own in the Appellant's Memorandum of Appeal.

Nonetheless, as garnered from the record, hair was not the only factor used to correctly identify the Appellant. The learned trial Judge relied on PW2's evidence that he was able to identify the Appellant by the missing toe nail on his big toe which fact was not rebutted by the Appellant in his defence. The Appellant was known to PW1, and PW2 having worked with them previously, he spoke to PW1 and took off his mask while searching for money in her house, the light was on and the order lasted about 4 to 5 hours.

In our view, all the above pieces of evidence point to the fact that the Appellant had tinted hair at the time of the robbery and was properly identified by the witnesses. The learned trial Judge correctly warned herself of the need for caution while dealing with the evidence on identification of PW1 and PW2 in view of the fact that the offence was committed at night. She was satisfied that the conditions at the scene were favourable for correct and unmistaken identification of the Appellant.

We have also considered the submission for the Appellant that PW1 and PW2 failed to mention the Appellant in their statements at police and yet they allege that he was known to them. This was never part of the accused's defence. We find that this was indeed a submission from the bar. PW3 testified that he took

down police statements but the said statements were not part of the record and the contents thereof are unascertainable. The learned trial Judge cannot be faulted for an issue that is not part of the record.

We have considered the range and character of the contradictions and inconsistencies so highlighted. We have not found them to be grave. We also find that the learned trial Judge evaluated the evidence in its entirety and found PW1 and PW2 to be truthful witnesses, consistent and they corroborated each other on the major details.

Accordingly, we find no reason to fault the learned trial Judge's findings and conclusion that the Appellant committed Aggravated robbery. In the result, we uphold the conviction and find that there was sufficient evidence to sustain a conviction.

In respect of the alternate ground of sentence, it is 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 sentence which is harsh and manifestly excessive in the circumstances. **See: Kamya Johnson Wavamuno v Uganda, Supreme Court Criminal Appeal No. 016 of 2000 (unreported) and Kiwalabye Bernard v Uganda, Supreme Court Criminal Appeal No. 143 of 2001 (unreported).**

While sentencing the appellant, at page 50 of the Record of Appeal, the trial court stated thus:

> *"The offence carries a maximum sentence of death. However, I will start with a sentencing range of 35 years. The Convict was formerly employed by the victim, they contracted you to help them plant grass in their compound. This conduct of yours which denies other youth jobs because of lack of trust.*
>
> *It was high handed the way the robbers tormented the family for many hours 4-5 hours. However, I also note that the injuries were minimum...*
>
> *However, the accused is young, there is room to reform. Therefore, I sent you to 30 years imprisonment, I will reduce the four years you have spent on remand and you serve 26 years imprisonment. This is also to help keep you out of trouble because now if you start at this age you become a habitual robber and you might even get killed. So you are safer in prison."*

From the above, it is clear that the trial court considered both the aggravating and mitigating factors before sentencing the Appellant to 30 years' imprisonment. It is the contention of Counsel for the Appellant that this sentence was harsh and excessive.

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) (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."*

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 decisis, the decisions of appellate courts are 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 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.

Bearing the above in mind, we shall now proceed to consider sentences passed in other similar cases. In **Rutabingwa James v. Uganda, Criminal Appeal No. 57 of 2011**, this Court confirmed a sentence of 18 years' imprisonment 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 nature of injuries which had been inflicted upon the victim.

In **Adama Jino v Uganda, Criminal Appeal No. 50 of 2006 at Gulu**, this Court reduced the sentence from death to 15 years' imprisonment. In that case, this Court took into account the period of 3 years and 2 months the Appellant had spent on remand, the fact that there had been no loss of life and the fact that the Appellant appeared repentant.

In **Pte Kusemererwa and Another v Uganda Criminal Appeal No. 27 of 2005**, the Appellants had been convicted of three counts of Aggravated robbery and they were sentenced to 20 years' imprisonment on each count. On appeal, the said sentence was reduced to 13 and 12 years respectively for each of the Appellants.

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 provided by **Regulation 20 of The Constitution (Sentencing Guidelines for 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.

In **Ninsiima v. Uganda Crim. Appeal No. 180 of 2010**, the Court held that 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 and the evidence as a whole it is clear that guns which are deadly weapons were used although no life was lost. We also take cognizance of the degree of meticulous pre-meditation or planning in this case. We have also considered the fact that the Appellant was a first- time offender aged 19 years at the time of commission of the offence. Considering the age of the Appellant, a long custodial sentence would not meet the intended purpose of reforming him back into society.

We find that the trial court considered both the mitigating and aggravating factors before sentencing the Appellant to 30 years' imprisonment, the sentence

passed was neither excessive nor harsh in the circumstances since the principle of parity and consistency in sentencing was followed. By passing this sentence, the learned trial Judge followed the sentencing principle regarding uniformity of sentences in similar cases.

When imposing a custodial sentence upon a person convicted of the offence of Aggravated Robbery c/s 285 and 286 (2) of the Penal Code Act, **the Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013** stipulate under Item 4 of Part I (under Sentencing ranges - Sentencing range in capital offences) of the Third Schedule, that the starting point should be 35 years' imprisonment, which can then be increased on basis of the aggravating factors of reduced on account of the relevant mitigating factors.

In **Guloba Rogers V Uganda, Criminal Appeal No.57 of 2013,** this Court sentenced the appellant to 35 years imprisonment having been convicted of aggravated robbery. The Supreme Court in Ojangole Peter V Uganda Criminal Appeal No.34 of 2017 confirmed a sentence of 32 years imprisonment where the appellant had been convicted of aggravated robbery.

We find the sentence of 26 years imprisonment to be neither harsh nor manifestly excessive and maintain it.

Decision

1. The conviction of aggravated robbery is upheld.

2. The sentence of 26 years' imprisonment is maintained to be served from 20th July 2015, the date of conviction.

We so order.

Dated at **Kampala** this 11th day of February 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