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THE REPUBLIC OF UGANDA  
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA  
CRIMINAL APPEAL NO. 272 OF 2015

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ASSIMWE TOM :.....APPELLANT  
VERSUS

UGANDA:.....RESPONDENT  
*(Arising from the decision of the High Court by Elizabeth Jane Alividza, J in  
High Court Criminal case No.203 of 2013, dated the 17<sup>th</sup> day of July 2015)*

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

JUDGMENT OF THE COURT

20 **Introduction**

The appellant, Assimwe Tom was indicted with the offence of Aggravated Robbery contrary to **sections 285 and 286 (2) of the Penal Code Act**. He was sentenced to **36 years imprisonment** by Justice Elizabeth Jane Alividza, J.

25 **Background to the appeal**

It was alleged that the appellant and others on the 3<sup>rd</sup> day of January 2012, at Ngobe Police post in Wakiso District, robbed No.37962 PC Oboth Isaac of a gun (SMG Riffle) No. 56-29022004 with 26 rounds of ammunition and at or immediately before or after the robbery used a deadly weapon to wit a panga  
30 on the said No.37962 PC Oboth Isaac.

On the fateful day, the victim (No.37962 PC Oboth Isaac), was on night duty at Ngobe Police post. At around 2.00 am, someone came to report a crime. As he was trying to assist the person, the said Person hit him. The victim tried to

5 defend himself but two other people came and assaulted him and took his gun. He was badly injured and taken for medical treatment. Police started investigations but had no leads.

In the month of July 2012, Police noticed a wave of armed robberies in the Fort Portal area. Police got information that there were some people that were trying  
10 to sell a gun. The appellant was arrested during the Police ambush that was laid down to arrest the persons who were trying to sell a gun. When the said gun was examined, it was found with Police markings and confirmed to have been the same gun that was stolen from the victim, PC Oboth Isaac at Ngobe Police  
15 post. The appellant was subsequently charged with the offence of Aggravated Robbery.

The appellant was tried and convicted of Aggravated Robbery. He was sentenced to 39 years imprisonment from which the trial Judge deducted the 3 years spent on remand and the appellant was left with 36 years to serve.

Being aggrieved by the decision of the trial Court, the appellant, with leave of  
20 Court, appealed against sentence only on the following ground:

**“The learned trial Judge erred in law and fact when she failed to properly evaluate all the facts of the case and sentenced the appellants to a very harsh sentence of 36 years imprisonment.”**

25 **Legal representation**

At the hearing, Ms. Awelo Sarah, holding brief for Ms. Janet Nakakande, appeared for the appellant on State brief while Ms. Acio Caroline, Chief State Attorney appeared for the respondent. Due to the COVID-19 pandemic

5 restrictions, the appellant was not physically present in Court but attended the proceedings via video link using Zoom technology from Prisons.

Both counsel filed and adopted their written submissions.

**Submissions of Counsel for the appellant**

10 Counsel submitted that the learned trial Judge erred in law and fact when she failed to properly evaluate all the facts of the case and sentenced the appellants to a very harsh sentence of 36 years imprisonment.

Counsel contended that the learned trial Judge convicted the appellant for Robbery but not Aggravated Robbery as indicted. She argued that the trial Judge thus passed a harsh sentence without considering the fact that he was a  
15 first offender with no previous criminal record.

She contended that the learned trial Judge only considered the aggravating factors but did not consider the mitigating factors while sentencing. She argued that the trial Judge did not take into account the appellant's age of 38 years at the time the offence was committed. According to counsel, the life expectancy  
20 in Uganda is about 45 years.

Counsel further argued that the learned trial Judge did not consider the fact that the appellant is lame and HIV positive, had family responsibilities, was remorseful and has the ability to reform.

25 Counsel prayed that Court considers the mitigating factors and allows the appeal. She proposed a sentence of 20 years imprisonment.

5 **Submissions of Counsel for the respondent**

Counsel submitted that the sentence of 36 years imprisonment for the offence of aggravated robbery is neither harsh nor excessive considering the fact that the maximum penalty for aggravated robbery is death.

10 Counsel contended that the aggravating factors in this case highly outweighed the mitigating factors. She averred that the Police officer was gravely injured and permanently disabled.

On counsel for the appellant's contention that the trial Judge convicted the appellant for robbery and not aggravated robbery, counsel for the respondent submitted that the record of proceedings shows that from the onset of the trial, 15 the appellant was indicted for the offence of aggravated robbery contrary to **sections 285 and 286 (2) of the Penal Code Act**. She averred that the appellant took plea on 18<sup>th</sup> June 2015, on the same charge and throughout the trial, the appellant was defending himself on the same charge.

20 Counsel further submitted that, the trial Judge upon evaluating all the evidence on record and making a finding that the prosecution had proved all the ingredients of the offence of aggravated robbery beyond reasonable doubt, she found the appellant guilty of robbery. Counsel argued that although the trial Judge failed to add the word "aggravated" next to "robbery" in her conclusion, it was clear from the entire record of proceedings and the Judgment that the 25 appellant was convicted of aggravated robbery and that was the offence for which he was sentenced.

As regards to counsel for the appellant's contention that the trial Judge passed a harsh sentence without considering the fact that the appellant was a first



5 offender, counsel for the respondent contended that the learned trial Judge clearly considered this mitigating factor while sentencing.

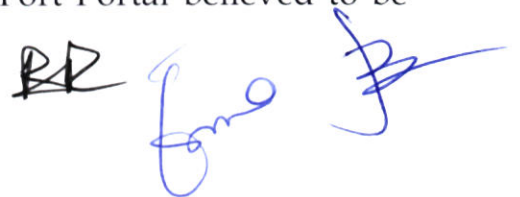
On the appellants age and the appellant's contention that the life expectancy is about 45 years, counsel for the respondent argued that this is inaccurate as the life expectancy in Uganda is 60.2 for male and 64.8 for women. Counsel argued  
10 that the appellants age ought to be weighed against his actions and the need to protect the society.

As regards to the appellant's HIV positive status and being lame, counsel argued that there is no evidence on record to show that Uganda Prisons do not have the facilities to manage his health conditions.

15 Regarding the argument that the appellant has family responsibilities, counsel for the respondent argued that considering the appellant's actions, he is a bad example and influence to his children. She argued that since the appellant failed to restrain himself from committing an offence that would affect his family, his arguments are not premised on the love of his family.

20 Counsel further submitted that the sentence as passed by the trial Judge was justified by the facts that the appellant was involved in a highly violent robbery of a Police gun, at a Police Station, in which a Police officer was seriously injured and remains permanently disabled. She noted that the victim testified that he was violently attacked for about 15 to 20 minutes. That he was cut 7 times using  
25 a panga, on his head and hands and he sustained serious injuries on very vulnerable parts of the body and he remained unconscious for 4 days.

Counsel added that this crime was highly premeditated and planned over time. She averred that there was a wave of robberies in Fort Portal believed to be



5 masterminded by the appellant and his group using the stolen gun. She noted that the gun was stolen with 26 rounds of ammunitions and recovered with only 10 and the appellant is silent on what happened to the 16 rounds of ammunitions they stole.

10 Counsel submitted that the appellant resisted arrest until he was shot in the leg by the Police. That the appellant went through a full trial with a lot of resistance and denials before he claimed remorse.

15 Counsel averred that the offence of aggravated robbery is a very serious crime, in the ranking of crimes in Uganda. She submitted that the penalty, as prescribed by law is high to achieve the deterrent effect. She emphasised that convicts have been sentenced to higher imprisonment terms and even death. Counsel thus submitted that the sentence of 39 years imprisonment is neither illegal nor harsh or manifestly excessive, the trial Judge did not overlook any material facts or evidence and the sentence is consistent with other sentences passed in cases of aggravated robbery.

20 She prayed that Court finds the sentence of 39 years appropriate in the circumstances of this case, dismisses the appeal and confirms the trial Court's decision.

### Consideration by Court

25 It has been consistently held in numerous cases both by the Supreme Court and the predecessor Court of Appeal for East Africa, and more specifically in the case of *Livingstone Kakooza v Uganda SC Criminal Appeal No. 17 of 1993 [unreported]* that:-



5        *“An appellate court will only alter a sentence imposed by the trial court if it is evident it acted on a wrong principle or overlooked some material factor, or if the sentence is manifestly excessive in view of the circumstances of the case. Sentences imposed in previous cases of similar nature, while not being precedents, do afford material for consideration: See Ogalo S/O*  
10        *Owoura v R (1954) 21 E.A.C.A. 270.”*

The appellant has faulted the trial Judge on several issues as discussed below;

First, the appellant contended that the learned trial Judge convicted him for Robbery but not Aggravated Robbery as indicted.

The trial Judge while convicting the appellant (who was A1 at the trial Court) stated as follows:-

20        *“Therefore I find A1, who was found in possession of the stolen property guilty of robbery contrary to section 285 and 286 (2) of the Penal Code Act since the prosecution has proved all the ingredients of the offence. I disagree with the accessors that he knew nothing about the robbery and find him guilty and convict him as charged.”* (Emphasis is ours)

From the above, it is clear that the trial Judge convicted the appellant as charged (he was charged of Aggravated robbery). In her Judgement, the trial Judge in evaluation of evidence, analysed the case with the ingredients of the offence of aggravated robbery from which she later found the appellant guilty and  
25 convicted him as charged. We find that there was a clerical error when the trial Judge recorded “... guilty of robbery contrary to section 285 and 286 (2) of the Penal Code Act.” Section 286 (2) of the Penal Code Act refers to aggravated robbery and not simple robbery which is covered by section 286(1) of the Penal

*BR* *Jone J*

5 **Code Act.** The trial Judge, therefore convicted the appellant of Aggravated Robbery.

Secondly, the appellant alleged that the learned trial Judge did not consider any of the mitigating factors but only considered the aggravating factors while sentencing. She argued that the trial Judge ought to have taken into account the  
10 appellant's age, health, family responsibilities, remorsefulness and ability to reform.

The trial Judge while sentencing the appellant, stated as follows:-

*"I will start with A1, the maximum sentence is the death penalty for aggravated robbery. A1 has no previous conviction, however court looked  
15 at the injuries inflicted on the victim where his life has now been permanently affected. Robbery of a gun at a police post is a daring and extremely violent act so the accused A1 deserves a deterrent sentence.*

*Therefore, I sentence A1 to 39 years imprisonment. You have been on remand for 3 years, therefore you will serve a sentence of 36 years  
20 imprisonment."*

A thorough perusal of the above, demonstrates that the trial Judge `took into account both the aggravating and mitigating factors as well as the period the appellant spent on remand.

The manner in which the appellant committed this crime was really  
25 traumatising. The appellant and others attacked a Police Station and stole a gun for purposes of using it in robberies in Fort-Portal. The Police Officer who was on duty that night was brutally attacked and left him permanently injured. These are factors worth consideration by the trial Judge, which she considered.

DD true J



5 We agree with the learned trial Judge that, in this case, the aggravating factors outweighed the mitigating factors.

The **Constitution (Sentencing Guidelines for Courts of Judicature) (Practice Directions 2013)**, provide for the sentencing range for the offence of aggravated robbery as 30 years and up to death.

10 In *John Katuramu vs. Uganda, Supreme Court Criminal Appeal No. 2 of 1998*, the appellant and others broke into the victim's home, badly assaulted one of the victims and stole several household items. The appellant was convicted and sentenced to suffer death by the High Court. The death sentence was confirmed by the Court of Appeal and upheld by the Supreme Court.

15 The Supreme Court in *Criminal Appeal No. 34 of 2017, Ojangole Peter vs. Uganda*, confirmed a sentence of 32 years imprisonment for the offence of aggravated robbery. In that case, the appellant and another were first sentenced to suffer death by the High Court. Following the decision in the case of *Attorney General vs. Suzan Kigula and 417 Ors, Constitutional Appeal No.03 of 2006*,  
20 the death sentence was reduced to 40 years imprisonment by the High Court in a resentencing procedure. On appeal to the Court of Appeal, the sentence was reduced to 35 years, which was only reduced to 32 years after deducting the period spent on remand. The Supreme Court found no reason to interfere with the sentence as passed by the Court of Appeal.

25 In the instant case, the sentence of 36 years was neither harsh or excessive as the trial Judge considered both the aggravating and mitigating factors as well as the period spent on remand while sentencing.



5 As a result, find that the said sentence was not illegal nor based on wrong principles and neither was it manifestly harsh nor excessive given the circumstances of this case.

We find no reason for Court to interfere with it. The sentence was given in accordance with the law and due consideration of the circumstances of this case.

10 We accordingly uphold the decision of the trial Court and dismiss this appeal.

Dated at Kampala this 24<sup>th</sup> 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

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