THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT JINJA
CONSOLIDATED CRIMINAL APPEALS NOS. 0846 AND 0848 OF 2014

1. KAKAIRE ABDUL AKA BUKALAMU
2. OWERE WILLIAM
ALIAS SENFUKA CHARLES MORO::::::::::::::::::::::::APPELLANTS

VERSUS

UGANDA::RESPONDENT

(Appeal from the decision of the High Court of Uganda at Mukono before Lameck N. Mukasa, J. delivered on the 13th day of October, 2014 (conviction) and 15th day of October, 2014 (sentencing) in Criminal Session Case No. 0151 of 2012.)

CORAM: HON. LADY JUSTICE ELIZABETH MUSOKE, JA
HON. MR. JUSTICE CHEBORION BARISHAKI, JA
HON. LADY JUSTICE HELLEN OBURA, JA

JUDGMENT OF THE COURT

Background

On 13th October, 2014, the High Court (Lameck-Mukasa, J.) convicted each of the appellants, on one count of the offence of Aggravated Robbery contrary to **Section 285** and **286 (2)** of the **Penal Code Act, Cap. 120** (count 1), and a second count of the offence of conspiracy to commit a felony contrary to **Section 390** of **the Penal Code Act, Cap. 120** (count 2). On 15th October, 2014, the High Court imposed, for each appellant, concurrent sentences of 26 ½ years imprisonment, on count one, and 1 ½ years imprisonment, on count two.

The High Court decision followed a joint trial of 4 persons, including the 2 appellants on an indictment, which alleged, that the said persons had on 8th May, 2011, at Nasuti Village in Mukono District, robbed Kizito Sam (the victim) of his motorcycle Reg. No. UDS 032G Bajaj Boxer, and had committed the robbery while armed with a deadly weapon, to wit a pick axe, which they

used on the victim. In count 2, it was alleged that the appellants had conspired to commit a felony of robbery the subject of count 1.

The facts of the case as accepted by the learned trial Judge are as follows. After midnight on 8th May, 2011 the victim was attacked by two assailants who stole the motorcycle he was riding at the time. The victim was a boda boda rider who operated in Mukono Town and Minutes before the attack, one of the assailants had hired the victim's services to be transported from Mukono town to Nasuti on the outskirts of the town. The victim stated that upon reaching Nasuti, the first assailant did not pay him the money as agreed upon as the fare for the ride.

Instead, a second assailant came and joined them and using a pick axe, he started to assault the victim. A blow from the pick axe caught the victim on the helmet that he had on and damaged it. Another blow caught the victim on the back. A further swing missed the victim and the pick axe got stuck in the ground. The victim ran from the scene as the second assailant tried to retrieve the axe from the ground. He went and hid in a nearby reed farm. The 2 assailants did not pursue him there and instead made off with the victim's motorcycle. The victim sustained injuries during the attack for which he had to get medical attention.

Following the attack, the victim went to Mukono Police Station to report the incident. He informed the police that he had known his assailants previously, and had been able to identify them. The first assailant who had hired him from Mukono Town was the 2nd appellant and the second assailant who had attacked him with a pick axe was the 1st appellant. Subsequently, the two appellants were arrested and taken into custody. Each appellant made a charge and caution statement in which he admitted to the offences as charged, and although, these statements were repudiated at trial, they were admitted in evidence.

Each of the appellants gave evidence at the trial in which they denied participating in the commission of the offences. The learned trial Judge, nonetheless, believed the prosecution evidence and convicted the appellants. Being dissatisfied with the decision of the learned trial Judge, the

appellants now appeal to this Court. Each appellant lodged in this Court, a separate Notice of Appeal, which was assigned a different appeal number i.e. No. 846 of 2014 for the 1st appellant and No. 848 of 2014 for the 2nd appellant. At the hearing, the two appeals were consolidated and handled together.

The appellants filed a joint memorandum of appeal, setting out the following grounds:

> "1. **The learned trial Judge erred in law and fact when he failed to evaluate the evidence on identification of the accused and use of a deadly weapon, thereby arriving at a wrong decision.**
>
> 2. **The learned trial Judge erred in law and fact when he sentenced the appellants to harsh and excessive sentences of 30 years and 5 months imprisonment in the circumstances of the case."**

The respondent opposed the appeal.

Representation

At the hearing, Ms. Kevin Amujong, learned counsel on State Brief appeared for the appellants. Ms. Naluzze Aisha Batala, learned Assistant Director of Public Prosecutions appeared for the respondent.

The appellants followed the hearing via Zoom Video Conferencing Technology while they remained at Jinja Government Prison where they were incarcerated. This was to accommodate for existing prison regulations, that placed restrictions on movement of inmates aimed at preventing the contracting and spread of COVID-19.

Written submissions filed for both sides prior to the hearing, were, with leave of the Court, adopted in support of their respective cases.

Appellants' submissions

Counsel for the appellants submitted on each ground, independently.

Ground 1

This ground alleges that the learned trial Judge did not properly appraise the prosecution evidence that was adduced to prove two elements of the offence

of aggravated robbery against the appellants, namely participation and use of a deadly weapon. On participation, counsel submitted that the identification evidence of the victim PW1 was lacking and had not proved the cases against the appellants beyond reasonable doubt. She contended that because the attack on the victim took place during wee hours, the victim's identification of the incident must have been difficult. As such, it was necessary to find corroborative evidence before the learned trial Judge could convict the appellants.

Counsel pointed out that the learned trial Judge had found corroboration in the charge and caution statement of each respective appellant, but submitted that he had erred by doing so. She contended that, contrary to the requirement under the provisions of **Section 2 of the Illiterate Protection Act, Cap. 78**, the charge and caution statements that had been attributed to the appellants, who were illiterate persons, did not contain a certificate of translation to show that they had been read over and explained to the appellants. In counsel's view, those charge and caution statements were defective and should not have been relied on as corroboration for the victim's identification evidence.

Further, counsel submitted that the learned trial Judge had erred to find that a deadly weapon was used in the attack on the victim, yet the weapon allegedly used during the attack was not recovered and there was no way of verifying the victim's testimony that the weapon was a pick axe. Counsel noted that the learned trial Judge found that the damage caused to the victim's helmet was consistent with the testimony that he had been struck with a pick axe. However, she submitted that the learned trial Judge ought to have considered that that damage may also have been caused by a fall or another non-deadly weapon. Further, that the prosecution did not lead evidence from a professional to prove that the damage on the victim's helmet had been caused by a pick axe. Counsel urged this Court to find that there was doubt as to the nature of the weapon used in the attack on the victim, and that that doubt ought to have been resolved in favour of the appellants. She relied on the authority of **Uganda vs. Kaweke Musoke [1976] HCB 12**, where Odoki, J. (as he then was) held to the effect that absence of evidence of the nature of attack weapon or a proper description of it, leaves

doubt as to the nature of the weapon which doubt ought to be resolved in favour of the accused person.

In view of the above submissions, counsel prayed this Court to allow ground 1 and quash the convictions of the appellants.

Ground 2

In support of ground 2, counsel submitted that there were grounds for this Court to interfere with the respective sentences of 30 years imprisonment that the learned trial Judge imposed on each appellant on the Aggravated Robbery count. The first ground is that the sentence was harsh and excessive given that the prosecution did not prove any aggravating factors as recognized in Paragraph 20 of the **Constitutional (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013**. The second ground, is that the sentences did not accord with the principle of consistency in sentencing as articulated in the authority of **Aharikundira Yustina vs. Uganda, Supreme Court Criminal Appeal No. 27 of 2015 (unreported).** Counsel contended that the Court of Appeal has in several previously decided Aggravated Robbery cases reduced sentences close to the starting point of 35 years imprisonment set out in the Sentencing Guidelines. He cited the authority of **Naturinda Tamson vs. Uganda, Court of Appeal Criminal Appeal No. 13 of 2011**, where this Court imposed a sentence of 16 years imprisonment, in an Aggravated Robbery case. Further, it was submitted that the seriousness of the offences committed by the appellants, was mitigated by a number of factors. Both appellants were first offenders, and were relatively young persons, who were still capable of reforming into useful citizens. Counsel urged this Court to set aside the sentences that the learned trial Judge imposed on both counts and substitute shorter sentences of 11 years on count one and 1 year on count two.

Respondent's submissions

In reply, Counsel for the respondent submitted on each ground, separately.

Ground 1

Counsel submitted that the victim's identification evidence had properly identified the appellants as the assailants who had attacked him on the fateful day. Several factors had assisted the victim to make correct identification of the appellants. The 1st appellant was known to the victim prior to the incident, while the victim had spent a long time with the 2nd appellant, with whom he had travelled on the same motorcycle for a considerable distance. The learned trial Judge was, therefore, right to believe the identification evidence. Moreover, the 2nd appellant had made a charge and caution statement, in which he not only admitted to committing the offence as charged, but also implicated the 1st appellant in commission of the said offences.

Counsel referred this Court to the authority of **Bogere Moses and Another vs. Uganda, Supreme Court Criminal Appeal No. 1 of 1997 (unreported),** for the proposition that when the prosecution adduces evidence that positively identifies an accused person during the commission of a crime, an alibi that the accused was elsewhere at the material time, must fail, and submitted that those principles were applicable in the present case. In the present case, the learned trial Judge had believed the victim's identification evidence, after he had warned himself of the dangers of mistaken identification, and after he was satisfied that the victim had correctly identified the appellants.

On whether a deadly weapon was used in the attack on the victim, counsel submitted that the victim's evidence was that the 1st appellant had assaulted him with a pick axe, and one blow from the weapon had damaged the victim's helmet. The damage on the helmet, which was exhibited in Court, proved that actual violence had been used in the attack on the victim. In those circumstances, use of a deadly weapon in terms of **Section 286 (2) of the Penal Code Act, Cap. 120** was sufficiently proved. Counsel urged this Court to disallow ground 1 and uphold the convictions of the appellants on the respective counts.

Ground 2

Counsel submitted that there were no grounds to justify this Court to interfere with the respective sentences that the learned trial Judge imposed on the appellants. She referred this Court to several authorities that articulate the grounds that may justify an appellate Court to interfere with a sentence that a trial Court imposed, such as; **Kyalimpa Edward vs. Uganda, Supreme Court Criminal Appeal No. 10 of 1995; Kamya Johnson Wavamuno vs. Uganda, Supreme Court Criminal Appeal No. 16 of 2000; Kiwalabye vs. Uganda, Supreme Court Criminal Appeal No. 143 of 2001 (all unreported).** Counsel submitted that those authorities hold that an appellate Court may only interfere if the sentence is illegal; where the trial Court failed to take into account a material factor while sentencing or if the sentence imposed is manifestly harsh or excessive or too low as to amount to a miscarriage of justice.

Counsel submitted that the sentences imposed on the appellants on each count were not illegal, and the learned trial Judge had considered all the applicable mitigating and aggravating factors. Therefore, she prayed this Court to confirm the sentences as imposed by the trial Court.

Appellant's rejoinder

On the issue of the victim's identification evidence, counsel for the appellant rejoined that there was insufficient light during the attack, and this had been a hindrance to correct identification. She pointed ought that although the victim alleged that the attack took place near a house with security lights, this seemed untrue considering that the victim also testified that he had to rely on his motorcycle's flash light to verify money that the 2nd appellant gave him. In counsel's view, this meant that there was insufficient light during the attack and that the victim had mistakenly identified the appellants.

In further rejoinder, counsel contended that the existence of a house with security lights was doubtful considering that the prosecution did not adduce a sketch plan of the scene to indicate that house.

On the respondent's submission that the victim gave credible evidence, counsel rejoined that there were signs that the victim's evidence was

concocted. First, the victim alleged to have been assaulted with a pick axe yet he adduced no medical evidence to show the injuries he suffered. Second, the indictment alleged that the victim lost motorcycle Reg. No. UDS 037 G Bajaj Boxer, and the victim supported that allegation when he testified. However, PW2, the owner of the motorcycle that PW1 rode gave a different registration number while he testified, namely UDG 032 G. Third, the pick axe that was allegedly used in the attack was not exhibited in evidence. Counsel maintained that the prosecution evidence failed to prove the case against the appellants beyond reasonable doubt.

Counsel further reiterated his earlier submission that the sentences that were imposed on the appellants were harsh and excessive and ought to be set aside.

Resolution of Appeal

We have carefully studied the Court record, considered the submissions of counsel for both sides and the law and authorities cited. We have also considered other relevant law and authorities not cited.

We are mindful of the duty of a first appellate Court as articulated in the case of **Kifamunte Henry vs. Uganda, Supreme Court Criminal Appeal No. 10 of 1997 (unreported)** as follows:

> **"On first appeal, from a conviction by a Judge the appellant is entitled to have the appellate Court's own consideration and views of the evidence as a whole and its own decision thereon. The first appellate court has a duty to review the evidence of the case and to reconsider the materials before the trial judge. The appellate Court must then make up its own mind not disregarding the judgment appealed from but carefully weighing and considering it. When the question arises as to which witness should be believed rather than another and that question turns on manner and demeanour the appellate Court must be guided by the impressions made on the judge who saw the witnesses. However, there may be other circumstances quite apart from manner and demeanour, which may show whether a statement is credible or not which may warrant a court in differing from the Judge even on a question of fact turning on credibility of witness which the appellate Court has not seen. See Pandya vs. R. (1957) E.A. 336 and Okeno vs. Republic (1972) E.A.**

32 Charles B. Bitwire vs Uganda - Supreme Court Criminal Appeal No. 23 of 1985 at page 5."

We shall now proceed to resolve the two grounds of appeal.

Ground 1

The case for the appellants is that the prosecution evidence was insufficient to prove the elements of the offences of which the appellants were convicted. The respondent on the other hand supported the decision of the trial Judge and argued that the prosecution evidence was sufficient.

We have found it necessary to reappraise the evidence adduced in the trial Court. We must reiterate that the appellants were convicted of the offences of Aggravated Defilement and Conspiracy to Commit a felony of Aggravated Robbery, respectively. The offence of Aggravated Robbery is provided for under **Sections 285 and 286 (2) of the Penal Code Act, Cap. 120,** which are reproduced below.

"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 (2) provides:

"286. Punishment for robbery.

(1) ...

(a) ...

(b) ...

(2) Notwithstanding subsection (1)(b), where at the time of, or immediately before, or immediately after the time of the robbery, an offender uses or threatens to use a deadly weapon or causes death or grievous harm to any person, such offender and any other person jointly concerned in committing such robbery shall, on conviction by the High Court, be sentenced to death.

The elements of the offence of Aggravated Robbery are as follows:

"1) **Theft of property belonging to the victim.**

2) **During the theft incident, the perpetrator(s) threatened to use or actually used violence against the victim.**

3) **The perpetrators also threatened to use or actually used a deadly weapon during the theft incident.**

4) **The accused person(s) were the perpetrator(s) of the incident."**

In the present case, the learned trial Judge accepted the prosecution case that the appellants each participated in an offence in which the victim was attacked and a motorcycle he was riding at the time stolen from him. The learned trial Judge also accepted that during the incident, the appellants applied violence on the victim using a deadly weapon, to wit a pick axe.

The key prosecution evidence was given by the victim of the offence. He testified that he was a boda boda rider operating in Mukono Town at the material time. He had been in the business for about one week riding a motorcycle owned by PW2 Balemezi Christopher. At the time of the incident, he had not taken interest to memorize the number on the motorcycle's registration plate.

The victim stated that as it was approaching midnight on 8th May, 2011, the 2nd appellant approached the victim to carry him to Nasuti on the outskirts of Mukono Town. After agreeing on a fare of Ug. Shs. 1,500/=, the two embarked on the journey to Nasuti. At a place called Kanana before they reached Nasuti, the 2nd appellant asked the victim to stop and leave him there. The victim saw that the spot where the 2nd appellant asked to be left was dangerous, and he continued until he reached a safer spot which was illuminated with light from security lights at a nearby house. When he stopped, the 2nd appellant refused to pay the agreed upon fare.

Shortly thereafter, the victim saw the 1st appellant running toward him while holding a pick axe, and tried to ride away from the scene. The victim knocked the 2nd appellant who was standing nearby and lost control of the motorcycle and fell down. The 1st appellant then caught up with the appellant and started to assault him with a pick axe. He struck and damaged the helmet that the victim was wearing. The 1st appellant continued to assault the victim

with the pick axe, hitting him on the back. The victim struggled and managed to run away. The 1st appellant continued to pursue the victim but missed when he threw the pick axe at the victim, and the pick axe got stuck in the ground. As the 1st appellant struggled to retrieve the pick axe from the ground, the victim fled from the scene and ran and hid in a nearby reed farm. The 1st appellant did not pursue the victim any further and instead return to meet with the 2nd appellant who was standing next to the victim's motorcycle. The two then made off with the victim's motorcycle.

The victim stated that he had sustained serious injuries and had become very weak and could not walk. However, he managed to crawl to a place where he was rescued by a passing boda boda rider. They tried to pursue the appellants but could not catch up with them. The victim then went and reported the incident at Mukono Police Station.

In cross examination, the victim stated that he had known the 1st appellant prior to the incident as a boda boda rider he used to see operating in Mukono Town.

Counsel for the appellants attacked the evidence of PW1 and submitted that the learned trial Judge should not have relied on it. He made several points in this regard. First, that there was no satisfactory corroboration of PW1's evidence which was identification evidence made under difficult circumstances. However, we note that counsel did not seriously canvass the point relating to the difficulty of the circumstances at the time of the identification of the appellants. We shall therefore not say much about it.

The point made by counsel for the appellants was that the learned trial Judge ought to have looked for other corroboration evidence to support PW1's evidence. However, there is no legal requirement or rule of practice requiring such corroboration and the rule is that a conviction can be based on evidence of a sole identifying witness if the circumstances ruled out mistaken identity. **See: Abudala Nabulere and Others vs. Uganda, Supreme Court Criminal Appeal No. 9 of 1978 (unreported)**. Further, under the law, no particular number of witnesses is required to prove any particular fact. **See: Section 133 of the Evidence Act, Cap. 6.** In the present case, the

learned trial Judge said this of PW1's evidence at page 59 to 60 of the record of Appeal:

> **"PW1 was a truthful and straight forward witness. I have carefully studied his evidence and the circumstances of identification and I find that he positively identified A1 and A2 as the people who stole the motorcycle from him at the scene of crime. His testimony was also corroborated by Owere's charge and caution statement where he implicates himself and A1. I therefore find that the prosecution has proved beyond reasonable doubt that A1 and A2 participated in the robbery."**

Since the learned trial Judge found PW1 to be a truthful and reliable witness, his identification evidence can be said to have ruled out mistaken identification and as such could solely form the basis of the appellants' convictions.

We note that the learned trial Judge also found corroboration in a confession given by the 2nd appellant in a charge and caution statement made while in police custody. At the trial, the 2nd appellant had objected to the statement saying that it was obtained through torture, but the learned trial Judge found that it had been made voluntarily. The appellants now raise another objection to that statement that it did not comply with the legal requirements set out under **Section 2 of the Illiterates Protection Act, Cap. 78**, in so far as the statement did not contain a certificate of translation as required for such documents under that section. The said provision states:

> **"2. Verification of signature of illiterates.**
>
> **No person shall write the name of an illiterate by way of signature to any document unless such illiterate shall have first appended his or her mark to it; and any person who so writes the name of the illiterate shall also write on the document his or her own true and full name and address as witness, and his or her so doing shall imply a statement that he or she wrote the name of the illiterate by way of signature after the illiterate had appended his or her mark, and that he or she was instructed so to write by the illiterate and that prior to the illiterate appending his or her mark, the document was read over and explained to the illiterate."**

We note that PW4 Detective Assistant Inspector of Police Okidi Ray Bob, who recorded the 2nd appellant's charge and caution statement testified that

before recording the statement, he had asked for the language that the appellant was most comfortable using, and he responded that it was Luganda. PW4 had then interacted with the appellant in Luganda, although he had recorded the statement in English. In our view, no injustice was occasioned to the appellant considering that the statement he recorded was found by the learned trial Judge to have been voluntarily made. Secondly, we do not think that lack of a certificate of translation will in all cases lead to rejection of a document. If that was the intention of Parliament while enacting the Illiterates Protection Act, Cap. 78, Parliament would have expressly stated so. Accordingly, we find that the charge and caution statement of the 2nd appellant was rightly relied on by the learned trial Judge. The gist of the confession was that the 2 appellants had planned and executed the attack on the victim PW1 during which the victim's motorcycle was stolen.

The appellants also raised a point on the nature of attack weapon contending that there was doubt as to whether the weapon was a deadly weapon considering that the said weapon was not recovered. It was contended that given the failure to recover the attack weapon, the victim's evidence that the weapon was a pick axe should not have been believed. We must emphasize that the learned trial Judge found the victim's evidence to be truthful and reliable. In his evidence, the victim was clear that a pick axe was used in the attack by the appellants. His evidence on this point was not shaken in cross examination. In our view, a conviction for aggravated robbery is not conditional on the recovery of the attack weapon, and a description of the weapon may suffice. This point was emphasized in **Mutesasira Musoke vs. Uganda, Supreme Court Criminal Appeal No. 17 of 2009 (unreported)** where the Supreme Court stated:

> **"In cases where an accused person is indicted for aggravated robbery, failure by the prosecution to exhibit in court the deadly weapon used in the robbery will not be fatal to the prosecution's case, as long as there is other reliable evidence adduced to prove that a deadly weapon was used."**

In the present case, the victim gave reliable evidence describing the deadly weapon used by the appellants as a pick axe. We also find that the learned trial Judge's findings that the damage caused to a helmet the victim was

wearing at the time of the attack was consistent with assault with a pick axe to have been reasonable and supportable on the evidence.

As for the submission that the learned trial Judge did not properly handle the appellants' alibis, we make the following observations. The learned trial Judge found that the prosecution evidence placing the appellants at the scene of crime was cogent and reliable. In such circumstances, he was entitled to reject the respective alibis set up by the appellants.

All in all, we find that there was no doubt as to the participation of both appellants in the attack on the victim and the learned trial Judge was right to convict them as charged.

Ground 1 of the appeal must fail.

Ground 2

This ground concerns the sentences that the learned trial Judge imposed on the appellants. The appellants urge this Court to interfere with the sentences on two grounds. First, that the sentences were wrong in principle; and secondly that the sentences imposed did not accord with the consistency principle articulated in **Aharikundira Yustina vs. Uganda, Supreme Court Criminal Appeal No. 27 of 2015 (unreported)** which rendered those sentences manifestly harsh and excessive in comparison to sentences imposed in previously decided cases.

The respondent submitted that there was no justification for this Court to interfere with the sentences that were imposed as the learned trial Judge considered all relevant aggravating and mitigating factors. The respondent therefore urged this Court to maintain the sentences.

On the contention that the sentences were wrong in principle, counsel for the appellants submitted that there were no aggravating factors in terms of paragraph 20 of the **Constitutional (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013**. We must state that an aggravating factor may be defined as a fact or situation that increases the degree of liability or culpability for a criminal act or a fact or situation that relates to a criminal offence or defendant and that is considered by the court in imposing punishment. **See: Black's law 8th Edition**. In the present case,

the learned trial Judge, in his sentencing remarks at page 51 of the record, identified several aggravating factors. He stated that the appellants committed an offence that caused the victim loss of property and employment. He also considered that theft of motorcycles was rampant and there was need to deter such acts of theft.

The next point made for the appellants was that the sentences imposed on the appellants did not accord with the consistency principle articulated in the **Aharikundira Yustina case (supra)**, that requires a sentencing Court to impose sentences that are consistent with sentences imposed in similar previously decided cases, we make the following comments. It was contended that the sentences imposed in previously decided aggravated robbery cases are shorter than the respective sentences of 26 ½ years imprisonment imposed in the present case. Counsel for the appellants referred to the case of **Naturinda Tamson vs. Uganda, Court of Appeal Criminal Appeal No. 13 of 2011 (unreported)** where this Court imposed a sentence of 16 years imprisonment for aggravated robbery. We have reviewed the facts of that case, the appellant was convicted on three counts including one of aggravated robbery. The appellant had gone to the victim's house from where they stole property including money and household items. The appellant had been armed with deadly weapons, namely, a panga and an iron bar.

In **Aliganyira Richard vs. Uganda, Court of Appeal Criminal Appeal No. 19 of 2005 (unreported)** this Court imposed a sentence of 15 years imprisonment after setting aside the death sentence imposed by the trial Court for aggravated robbery. The appellant had gone to the victim's house and stolen money from her. In the process the appellant had assaulted the victim, although it was not clear if he had used weapons or fists.

In **Saava Sendu Tonny vs. Uganda, Court of Appeal Criminal Appeal No. 0600 of 2014 (unreported),** this Court found a sentence of 20 years imprisonment appropriate for aggravated robbery. The appellant was part of a group of robbers armed with guns who waylaid a passenger taxi and stole property from the passengers on board.

In view of the above cases, we find that the sentence of 30 years imprisonment that the learned trial Judge imposed on the appellants for aggravated robbery before deducting the remand period was harsh and excessive as it was higher than the range of sentences (15 to 20 years imprisonment) imposed in the similar cases highlighted above. We shall therefore set it aside.

We shall proceed to determine a fresh sentence pursuant to the powers vested in this Court under **Section 11** of the **Judicature Act, Cap. 13.** The aggravating factors submitted in the trial Court at page 49 of the record were as follows. The offence committed by the appellants led to loss of a motorcycle, the property of the victim PW2 which was never recovered. The victim PW1 lost his employment as a boda boda rider. It was also submitted that the theft of motorcycles was rampant in the area.

The mitigating factors were as follows. The appellants were first offenders. The appellants had shown prospects of reforming during their time in prison. We also note the youthful ages of the appellants at the time of sentencing – the 1st appellant was aged 25 years while the second was 26 years.

We have also considered the fact that the victim did not sustain grievous injuries following the attack by the appellants. In his testimony, the victim PW1 testified that while he was targeted with strikes to the head, he was protected by a helmet he had on at the time. No evidence was adduced by the prosecution to show that the victim PW1 suffered any other serious injuries.

We note that the offence of aggravated robbery is a serious offence, and that incidents of commission of that offence could have been high as highlighted by the learned trial Judge. However, in our view, the circumstances of the case warranted a more lenient sentence. We thus find a sentence of 18 years imprisonment sufficient. From that sentence, we shall deduct the period of 3 ½ years that each appellant spent on remand prior to sentencing. The appellants shall therefore serve sentences of 14 ½ years imprisonment on the count of aggravated robbery. The sentence of 1 ½ years imprisonment that was imposed on the count of conspiracy to commit

a felony is upheld, but it must be noted that it has been fully served by the appellants.

In conclusion, the appellants' appeal against their respective convictions for aggravated robbery and conspiracy to commit a felony is dismissed, while their appeal regarding sentence is allowed in the terms stated in this judgment. Each appellant shall serve a sentence of 14 ½ years imprisonment for aggravated robbery to run from 13th October, 2014, the date of their conviction in the trial Court.

We so order.

Dated at Jinja this ....24th.... day of ....February.... 2022.

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Elizabeth Musoke

Justice of Appeal

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Cheborion Barishaki

Justice of Appeal

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Hellen Obura

Justice of Appeal