THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA HOLDEN AT MBALE

CRIMINAL APPEAL NO.98 OF 2018

(CORAM: Obura, Bamugemereire & Madrama, JJA)

SSENTONGO ERIC:: APPELLANT

VERSUS

UGANDA:: RESPONDENT

[Appeal from the Decision of Tadeo Asiimwe J, dated 10th August, 2018 in High Court Criminal Session No.26 of 2013 Holden at Mbale)

JUDGMENT OF THE COURT

The appellant, Eric Ssentongo was indicted for the offence of Aggravated Robbery contrary to section 285 and 286 (3) (a) (ii) of the Penal Code Act. It was alleged that the Appellant and others still at large on the 20th day of February 2013 at Gangama Road in Mbale District robbed Tofa Ziraba of his Motor Cycle Registration No. UDY 780V and during the robbery chloroformed the said Tofa Ziraba.

Background

The facts in the lower court were that on the 20th day of February 2013, one Tofa Ziraba, a ***boda boda*** rider was riding a motorcycle Reg. No. UDY 780V from Nakaloke when he was stopped by a lady customer who requested to be taken to Gangama. He carried the lady customer and on arrival the lady asked the ***boda boda*** rider (local slung for a motorcycle turned into a public transport/service vehicle) to wait for someone who was bringing his transport fare. Shortly the accused

person appeared with two cans of a bottled fruit drink commonly known as Safi Juice and gave one bottle to the rider and the other to the child the lady was carrying. The rider appreciated the kind gesture and partook of it. Within minutes of drinking the 'juice' he felt dizzy and lost consciousness. When he recovered two days later, he was in a facility known as Mbale General Clinic in Mbale City. It is alleged that the appellant took the Motorcycle from the victim and rode heading to Kampala. When the appellant reached Kamonkoli Trading Centre towards Budaka Town, the owner of the Motorcycle identified it and immediately called the rider but his phone was off.

The owner mobilized other boda boda riders who chased after the appellant, admonishing him to stop. He did not stop but later jumped off the motorcycle and started running. He was apprehended by the angry mob who attempted to lynch him. He was only rescued by the police from Budaka Town Centre. The appellant was handed over to Mbale Central Police Station where he was charged accordingly. The Motorcycle was recovered and exhibited. An identification parade was conducted where the victim identified the appellant.

At the trial, the appellant pleaded not guilty. He was tried, convicted and was sentenced to 19 years and 8 months' imprisonment. Dissatisfied, the appellant sought the leave of this court to appeal against sentence only which leave was granted. The sole ground of appeal as set out in the Memorandum of Appeal is:

That the Learned Trial Judge erred in law and fact when he sentenced the appellant to 19 years and 8 months imprisonment which was harsh and excessive.

Representation

At the hearing of the appeal the appellant was represented by Mr. Deogratius Obedo on state brief while Mr Peter Mugisha Bamwine a State Attorney from the Office of the Director of Public Prosecutions represented the Respondent. The appellant was physically present in court.

Both counsel filed their written submissions. Court granted the appellant leave to appeal against sentence only. The written submissions of both counsel have been relied upon in the determination of this appeal.

Counsels' Submissions

Counsel for the appellant submitted that this being a 1st appellate court, it has a duty to re-evaluate and re-examine the evidence adduced before the lower court. Counsel invited this court to disassociate itself with the findings of the trial Judge when he overlooked the material mitigating factors put forward by the appellant. Counsel submitted that the sentence of 19 years and 8 months passed by the trial judge was excessive and harsh. He called on this court, upon making up its own mind, to impose a lenient sentence.

He cited **Edward Kyalimpa v Uganda SCCA No. 10 of 1995** which lays down the principal that an appropriate sentence is a matter for the discretion of the sentencing judge. It was counsel's submission that this court has power under **S. 11 of the Judicature Act** to set aside the illegal sentence and impose a lawful one. Counsel averred that the mitigating factors were that the appellant was a first offender and had spent 9 years

on remand. Counsel prayed that the appeal be allowed and the sentence set aside and substituted by a lessor one resulting in the release of the appellant.

In reply to the appellant's submissions, counsel for the respondent submitted that the sentence of 19 years and 8 months was neither harsh nor excessive especially where the maximum sentence for aggravated robbery is death. In addition, counsel argued that in the 3rd schedule of the **Judicature Constitutional Sentencing Guidelines** the starting point for the offence of Aggravated Robbery contrary to s. 285 and 286 of the PCA was 35 years' imprisonment. It was counsel's submission that in cases where there exist the factors that point to the 'rarest of rare' circumstances, the suitable sentence is death but in this case it was not given.

It was counsel's contention that the appellant committed a gruesome crime when he offered purported juice laced with a substance that caused instant loss of consciousness on the part of the victim rider. He woke up in a medical clinic about two days. It was counsel's submission that the appellant gravely put his victim's life in peril. Counsel invited this court to not interfere with the sentencing discretion of the trial judge, relying on **Kiwalabye v Uganda SCCA No. 143 of 2001.**

Counsel further submitted that the trial judge considered both the aggravating and mitigating factors. He cited **Nyangasi Dalton v Uganda SCCA No. 74 of 2015** where court upheld a sentence of 26 years imprisonment for aggravated robbery for being neither harsh nor excessive. Counsel prayed that the sentence of 19 years and 8 months be upheld because was neither harsh nor excessive in the circumstances.

Consideration of the Court

This appeal is against sentence only. We have carefully considered the submissions of Counsel, the record and authorities availed to us. We are alive to the duty of this court as a first appellate court to reappraise all the evidence at trial and come up with our own inferences of law and fact. **(See Kifamunte Henry v Uganda SCCA No. 10 of 1997).**

We are cognisant of the duty not to interfere with the discretionary role of a trial judge while passing sentence unless such discretion was veiled elements of illegality making such a sentence illegal or based on a wrong principle or that the court overlooked a material factor or where the sentence is manifestly excessive or so low as to amount to a miscarriage of justice. (See **Kamya Johnson Wavamuno v Uganda SCCA No. 16 of 2000** and **Livingstone Kakooza v Uganda SCCA No. 17 of 1993**).

In the instant appeal, counsel for the appellant contended that the sentence of 19 years and 8 months was harsh and excessive.

We have had the opportunity to reappraise the sentence passed by the learned trial judge and observed that he considered both aggravating and mitigating factors including the period spent on remand. The trial judge considered that the appellant was a first offender of youthful age and that the property was recovered.

The Supreme Court in **Aharikundira v Uganda SCCA No. 27 of 2015** underlined the duty of this court while dealing with appeals regarding sentencing to ensure consistency with cases that have similar facts.

This court in **Alex Biryomunsi v Uganda CACA No. 464 of 2016** restated the position in **Katureebe Boaz & Anor v Uganda SCCA No. 066 of 2011** where it was held that;

"Consistency in sentencing is neither a mitigating nor an aggravating factor, the sentence imposed lies in the discretion of the court which in exercise thereof may consider sentences imposed in other cases of a similar nature."

In **Olupot Sharif & Anor v Uganda CACA No. 0730 of 2014,** the appellant was convicted of the offence of aggravated robbery and sentenced to 40 years imprisonment. On appeal, this court reduced the sentence to 32 years imprisonment.

In **Bakabulindi v Uganda SCCA No. 21 of 2015**, the appellant and another person robbed a victim of his motorcycle and inflicted grievous harm on the victim leaving him unconscious. The appellant was convicted of aggravated robbery and sentenced to 15 years imprisonment which sentence was upheld by this court and the Supreme Court.

Similarly, in **Rutabingwa James v Uganda CACA No. 57 of 2011**, this court confirmed a sentence of 18 years imprisonment for aggravated robbery.

In **Saidi Kabanda v Uganda CACA No. 472 of 2016**, Court maintained a sentence of 22 years imprisonment for the offence of aggravated robbery.

In **Bogere Asiimwe Moses & Senyonga Sunday v Uganda SCCA No. 39 of 2016,** the Supreme Court upheld a sentence of 20 years

imprisonment imposed for aggravated robbery where the appellants were 22 and 23 years old respectively and there was no violence or death during the robbery.

In **Ojangole Peter v Uganda SCCA No. 34 of 2017**, the Supreme Court confirmed a sentence of 32 years for the offence of aggravated robbery.

The Trial Judge also considered the aggravating circumstances surrounding this case which included the manner in which the boda boda rider was lured into a treacherous ring and offered a laced drink leading to his loss of unconsciousness and long-lasting cognitive memory and balance loss. By disabling his victim, the appellant was able to rob the motorcycle, almost effortlessly. Fortunately, or unfortunately for him, the transaction was interrupted and he was apprehended in the process of making off with the stolen motorcycle. The trial judge was quick to note that the appellant was a first offendor and a man young enough to reform. Given the circumstances of this case, we are firmly of the view that the trial judge took into consideration both the aggravating and mitigating factor.

We note that while sentencing, the trial judge was alive to the fact that the offence of Aggravated Robbery c/s 85 and 286 of the PCA carries a maximum sentence of death. Under the Sentencing Guidelines, the starting point in considering a custodial sentence is 35 years' imprisonment. See **Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013.**

Given the totality of the circumstances surrounding this case we find that the sentence of 19 years and 8 months' imprisonment was on the

lenient side. Also, the trial judge took into consideration the time the appellant had spent on remand. Consequently, we find no reason to interfere with the sentence as meted out the trial judge.

In conclusion and for the reasons advanced above, we find no merit in this appeal. It is accordingly dismissed.

Nota Bene
Our brother the **Hon. Justice Christopher Madrama JA** does not agree with the sentence and therefore has not endorsed this judgment.

Dated at Kampala this.....18th.....Day of .....January.....2022 2023

Hon. Lady Justice Hellen Obura
Justice of Appeal

Hon. Lady Justice Catherine Bamugemereire
Justice of Appeal