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**THE REPUBLIC OF UGANDA**  
**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**  
*Coram: Buteera, DCJ, Mulyagonja & Mugenyi, JJA*  
**CRIMINAL APPEAL NO. 0016 OF 2018**

10 **1. KIBUUKA JOHN**  
**2. KASANDA ABDUL AKIMU :::::::::::::::::::: APPELLANTS**  
**VERSUS**  
**UGANDA:::::::::::::::::: RESPONDENT**

15 *(Appeal from the decision of Moses Kazibwe, J, delivered on  
16<sup>th</sup> January 2018 at Kampala in High Court Criminal  
Session Case No. 29 of 2013)*

**JUDGMENT OF THE COURT**

20 **Introduction**

The appellants were indicted with three others for the offence of aggravated robbery contrary to sections 285 and 286(2) of the Penal Code Act, and attempted murder contrary to section 204 of the Penal Code Act. The appellants pleaded guilty to both offenses  
25 and the first appellant was sentenced to 25 years' imprisonment on the first count and 10 years' imprisonment on the second count, both sentences to run concurrently, The 2<sup>nd</sup> appellant was sentenced to 23 years' imprisonment on the first count and 10 years' imprisonment on the second count, both sentences to run  
30 concurrently.

**Background**

The facts that were admitted by the appellants were that on 21<sup>st</sup> March 2015 at about 10:00 pm, while locking her mobile money  
35 shop, Nalwadda Harriet was waylaid and attacked by a group

*AP Iken.*  
*Mugenyi.*

5 which included the appellants dressed in police uniform and in  
possession of two guns. That one of them grabbed her bag which  
contained UGX 12,000,000/=, airtime worth UGX 4,000,000/=,  
an Agent MTN line No. 078351115 with commission of UGX  
2,700,000/=, another line with UGX 300,000/= as well as two  
10 other mobile phones.

When the victim resisted the taking of her bag, one of the  
assailants used a gun to shoot her in the right thigh and another  
shot her in the stomach. She sustained grave injuries. The  
assailants sped away on motorcycles while the victim was taken  
15 to Mengo Hospital, unconscious. The Police tracked down one of  
the assailants and he identified the other four. All five of them,  
two of whom are the appellants in this appeal, were arrested and  
charged with aggravated robbery and attempted murder.

20 The appellants here pleaded guilty and the trial judge convicted  
and sentenced them as we have indicated above. Dissatisfied with  
the sentences they now appeal on one ground as follows:

25 **That the learned trial judge erred in law and fact when  
he sentenced the appellants to a harsh and excessive  
sentence in the circumstances.**

### **Representation**

At the hearing of the appeal on 17<sup>th</sup> August 2023, Ms. Sheila  
30 Kihumuro represented the appellants on State Brief. The  
respondent was represented by Ms. Sharifa Nalwanga, Chief State  
Attorney, from the Office of the Director Public Prosecutions.

The appellants' Advocate applied for leave to appeal against  
sentence only and her prayer was granted. Counsel for both

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5 parties filed written submissions before the hearing. They each  
prayed that the submissions be considered by the court as their  
final arguments and their prayers were granted.

### **Submissions of Counsel**

Ms. Kihumuro, for the appellant, referred to **Kifamunte Henry v**  
10 **Uganda; Criminal Appeal No. 10 of 1997** and **Bogere Moses &**  
**Anor v Uganda; Criminal Appeal No. 1 of 97** and submitted that  
as a principle, on a first appeal the parties are entitled to obtain  
from the appellate court its own decision on issues of fact as well  
as of law.

15 She relied on the decisions in **Aharikundira Yustina v Uganda;**  
**Supreme Court Criminal Appeal No. 27 of 2005, Epuat Richard**  
**v Uganda; Criminal Appeal No. 0199 of 2011** and **Naturinda**  
**Tamson v Uganda; Criminal Appeal No. 13 of 2011** to support  
her submissions on the sentences. She argued that the learned  
20 trial judge did not properly take into account or properly weigh  
the mitigating factors in favour of the appellants. That as a result,  
he imposed sentences upon them that were harsh and excessive  
when he sentenced the 1<sup>st</sup> appellant to 25 and 10 years  
imprisonment, respectively, on the two counts for which he was  
25 indicted; and the second appellant to 23 years and 10 years'  
imprisonment, respectively, both of the sentences to run  
concurrently.

Counsel further submitted that the appellants were youthful,  
first-time offenders, did not waste courts' time since they pleaded  
30 guilty and were remorseful. She added that the prosecution failed  
prove that the convicts were on remand in respect of another case  
pending before the court. She invited this court to consider the  
sentences passed against the appellants as harsh and excessive

   
