

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT MBARARA
(Coram: Buteera DCJ, Gashirabake, & Kihika, JJA)

CRIMINAL APPEAL NO. 677 OF 2015

KWIZERA GODFREY:.....APPELLANT

VERSUS

UGANDA:.....RESPONDENT

(Appeal from the decision of the High Court of Uganda held at Kabale presided over by Hon. Mr. Justice Micheal Elubu delivered on 25th June, 2014 in Criminal Session Case No. 47 of 2014)

JUDGMENT OF COURT

BACKGROUND

The facts as can be ascertained from the record are that the appellant and 2 others met Pascal Bizimana and his step brother Niyibizi Emmanuel on 25th November, 2011 at 9:00 pm in Kisoro near Kisoro main market on the Kisoro-Kabale highway. The two were each carrying a sack of grasshoppers.

Pascal Bizimana greeted the appellant but the appellant did not respond. The appellant ordered them to put down the sacks of grasshoppers. They defied the order. The 2nd and 3rd convicts who did not appeal against their conviction and sentence emerged from culverts and surrounded Pascal Bizimana and Niyibizi Emmanuel.

In the process, the appellant stabbed Pascal near the eye. Emmanuel managed to escape unhurt while making an alarm. The appellant together with the 2nd and 3rd convicts disappeared with the grasshoppers. Emmanuel managed to get help and came back on a motorcycle and found Pascal lying in a pool of blood. He took Pascal



to Kisoro Hospital for medical attention where he was admitted for treatment of the injury.

The appellant was indicted and convicted of the offence of aggravated robbery contrary to sections 285 and 286 (2) of the Penal Code Act Cap 120. He was sentenced to 15 years' imprisonment.

Ground of Appeal

The trial judge erred in law and fact when he imposed the sentence of 15 years' imprisonment to the appellant which was harsh and manifestly excessive considering the circumstances of the case.

REPRESENTATION

At the hearing, the appellant was represented by Ms. Maclean Kemigisha on state brief. Mr. Semalemba Simon Peter Assistant DPP represented the respondent. Counsel for the parties filed written submissions. They applied to Court and were granted leave to adopt and rely on them as their final submissions.

APPELLANT'S SUBMISSIONS

Counsel for the appellant applied to Court under Rule 43(3)(a) of the Judicature (Court of Appeal) Rules and Section 132(1)(b) and (2) of the Trial on Indictments Act (Cap 23) to appeal against sentence only. The application was granted.

Counsel for the appellant submitted that the trial Court did not take into account the mitigating factors advanced by the appellant and his counsel which would have attracted a less than 15 years' imprisonment.



The mitigating factors advanced are that he was a married man with two children. That the wife left after the appellant's arrest. The appellant prayed for a lenient sentence to allow him go back and look after his children.

Counsel submitted that the subject matter that is alleged to have been robbed was valued at UGX 80,000/= and that the time the appellant has spent in custody is sufficient punishment. That he had learnt a lesson and he should be set free.

The case of **State Vs. Mukwanyane [1995] S.A 391** was cited where court noted that;

"Mitigating and aggravating factors must be identified by the Court, bearing in mind that the onus is on the State to prove beyond reasonable doubt the existence of aggravating factors, and to negative beyond reasonable doubt the presence of any mitigating factors relied on by the accused. Due regard must be paid to the personal circumstances and subjective factors which might have influenced the accused person's conduct, and these factors must then be weighed up with the main objects of punishment, which have been held to be: deterrence, prevention, reformation, and retribution. In this process "[e]very relevant consideration should receive the most scrupulous care and reasoned attention."

Counsel for the appellant submitted that an appellate Court does not normally interfere with the discretion of the sentencing Judge unless the sentence is illegal or unless Court is satisfied that the sentence imposed by the trial Judge was manifestly excessive to occasion an injustice.

Counsel prayed that Court invokes its jurisdiction under Section 11 of the Judicature Act and imposes an appropriate sentence. Counsel proposed a sentence of 10 years' imprisonment as being sufficient

taking into account the mitigating factors and the time the appellant had spent on remand be deducted from the 10 years.

RESPONDENT'S SUBMISSIONS

Counsel for the respondent submitted that the sentence of 15 years' imprisonment meted out to the appellant was neither harsh nor manifestly excessive in the circumstances.

Counsel submitted that while sentencing the appellant, the trial Judge considered that the appellant was a first offender, had spent two and a half years on remand and the value of the subject matter that was involved as mitigating factors in favour of the appellant.

Counsel submitted that the trial Judge considered that aggravated robbery carries a maximum sentence of death and that the sentencing guidelines give a starting point of 35 years. That the trial Judge also considered that the appellant stabbed the victim on the eye and spent a long time in hospital recovering from the injury before concluding that 15 years' imprisonment was appropriate.

Counsel for the respondent cited **Mujuni Frank Vs Uganda (Criminal Appeal No. 203 of 2016)** where a sentence of 15 years' imprisonment for aggravated robbery of UGX 330,000/= was maintained by this Court.

Tito Buhingiro Vs Uganda (SCCrA No. 8 of 2014) was also cited where a sentence of imprisonment of 19 years for aggravated robbery imposed by the trial Court was maintained by the Court of Appeal and Supreme Court.

Counsel referred to **Abaasa Johnson & Anor Vs Uganda (Court of Appeal Criminal Appeal No. 33 of 2010)** where a sentence of 15 years' imprisonment for aggravated robbery on each of the three counts of aggravated robbery the appellants had been convicted of were maintained.

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The case of **Kiwalabye Vs. Uganda (Supreme Court Criminal Appeal No. 143 of 2001)** was also cited for the principle that it is now settled law that an appellate Court is not to interfere with sentence imposed by a trial Court which has exercised its discretion on sentences unless the exercise of the discretion is such that the trial Court ignores to consider an important matter or circumstances which ought to be considered when passing the sentence.

RESOLUTION BY COURT

We have studied the record of the lower Court. We have also considered the submissions of counsel for either party, the authorities cited and the law applicable to this appeal. The appeal at hand is against sentence only.

The overriding principle for consideration by appellate Courts in interfering with sentences imposed by the trial Court was espoused in **Kiwalabye Benard Vs Uganda (Criminal Appeal No. 143 Of 2001)** as follows: -

"The appellate Court is not to interfere with the sentence imposed by a trial Court which has exercised its discretion on sentence unless the exercise of the discretion is such that it results in the sentence imposed to be manifestly excessive or so low as to amount to a miscarriage of justice or where a trial Court ignores to consider an important matter or circumstances which ought to be considered when passing the sentence or where the sentence imposed is wrong in principle."

In **Naturinda Amon Vs. Uganda (Criminal Appeal No. 95 of 2010)**, the Court held:

"As an appellate Court, we can only interfere with a sentence imposed by a trial Court in very limited circumstances. We can do so only where the sentence is either illegal, or founded Upon a wrong principle of the law, or the Court has failed to consider a material factor."



According to **Section 286 (2)** of the Penal Code Act, the maximum punishment for the offence of aggravated robbery is death.

According to the Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2012 in the third schedule, Part 1, Item 4, the starting point for sentences in aggravated robbery cases is 35 years' imprisonment and the sentencing range runs from 30 years' imprisonment up to death.

Counsel for the appellant submitted that the trial Judge did not consider the mitigating factors raised by the appellant before sentencing him as he did.

We have perused the record of the High Court where the appellant was sentenced. The trial Judge took into account the appellant's mitigating factors to wit; being a first offender and remorsefulness.

He also took into account the aggravating factors such as the injury inflicted upon the victim which was near the eye.

Before sentencing the appellant, the learned trial Judge noted;

"The convicts shall all be treated as first offenders as there is no evidence of antecedents..... I note that Pascal Bizimana was stabbed above the eye and lost consciousness. He had to spend a considerable length of time in hospital recovering. For those reasons and reducing the sentences by the two and a half years already spent in prison, I find the following to be appropriate;

1. Kwizera Godfrey: Shall serve 15 years in prison for the role he played in stabbing Pw 1.

2. Tumushime Yoweri: Shall serve 12 years in prison.

3. Kamurasi Amos: Shall serve 12 years in prison."



Paragraph 31 of the Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2012, provides the factors to consider that may aggravate a sentence for robbery. It states: -

"In considering imposing a sentence for robbery, the court shall be guided by the following aggravating factors -

- (a) Degree of injury or harm;
- (b) The part of the victim's body where harm or injury was occasioned
- (d) Use and nature of the weapon
- (g) Whether the offender was part of a group or gang and the role of the offender in the group, gang or commission of the crime;"

We have perused the trial Court record and find that the learned trial Judge properly addressed his mind to the relevant law and circumstances of the offence before sentencing the appellant. He took into account all the necessary considerations before passing sentence. We have considered the authorities cited by both counsel for the appellant and the respondent. Taking into account Paragraph 31 (g) of the Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2012, of all the three attackers, it was the appellant who stabbed the victim of the robbery. He is the one who made the initial demand for the victim and his colleague's grasshoppers. This makes his role in the crime more serious. It is for the appellants' role in the commission of the crime that he was sentenced to 15 years' imprisonment while Tumushime Yoweri and Kamurasi Amos, the 2nd and 3rd convicts were sentenced to 12 years' imprisonment each.

It is our finding that the sentence meted onto the appellant was neither harsh or manifestly excessive. We find no reason to interfere with the sentence the trial Judge passed.

This appeal lacks merit and is dismissed.

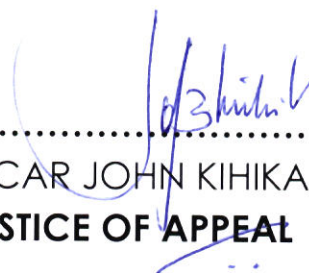
DATED AT Mbarara this.....^{15th}.....day of.....^{January}.....2024.



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RICHARD BUTEERA
DEPUTY CHIEF JUSTICE



.....
CHRISTOPHER GASHIRABAKE
JUSTICE OF APPEAL



.....
OSCAR JOHN KHIKA
JUSTICE OF APPEAL