

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA SITTING AT GULU**  
**CRIMINAL CASE No. 0253 OF 2019**

**UGANDA ..... PROSECUTOR**

**VERSUS**

**1. OJARA STEPHEN }**  
**2. PEKO STEPHEN } ..... ACCUSED**

**Before: Hon Justice Stephen Mubiru.**

**PROCEEDINGS**

9<sup>th</sup> July, 2020

3.06 pm

**Attendance**

Mr. Kilama Stephen, Court Clerk.

Mr. Omia Patrick, Resident State Attorney for the Prosecution.

Mr. Abore Patrick, Counsel for the accused.

The accused is present in court

**A2 Peko Stephen:** I speak Acholi.

**State Attorney:** we have negotiated a plea bargain and accordingly executed a plea agreement which I pray to present to court.

**Counsel for the accused:** That is correct.

**Accused:** I signed the agreement willingly at pages 5. My constitutional rights were explained to me and I willingly waived them fully cognisant of the consequences of signing the plea agreement.

**Court:** The agreement is received and hereby forms part of the court record.

.....  
Stephen Mubiru  
Judge  
9<sup>th</sup> July, 2020.

**Court:** The Indictment is read and explained to the accused in the Acholi language.

**Details;** Aggravated Robbery C/s 285 and 286 (2) of *The Penal Code Act*. It is alleged that the accused and others still at large on the 12<sup>th</sup> day of June, 2017 at Kal Centre village, Pabbo sub-county in Amuru District robbed Masabo Eric Pierre of three boxes of casino machines containing cash in the sum of shs. 4,700,000/= and immediately before, during or after the said robbery used a deadly weapon, to wit, a knife, on the said Masabo Eric Pierre.

**Accused:** I have understood the indictment. It is true.

**Court:** A plea of guilty is entered.

.....  
Stephen Mubiru  
Judge  
9<sup>th</sup> July, 2020.

**State Attorney:** On the night of 12<sup>th</sup> June, 2017 the accused together with others robbed three casino machines containing shs. 4,700,000/= from the victim. They were in possession of a knife. The victim escaped and ran from his house where he had been attacked and reported to Pabbo Police Post. The police searched for the robbers and the accused together with another emerged from the bush and had 50,000/= in 500 shillings coins. They led the police to recover the boxes they had broken into in the bush. The accused recorded a charge and caution statement admitting having participated in the robbery. He was examined medically and found to be mentally normal. He was of the apparent age of 15 years.

**State Attorney:** I pray to tender in the medical forms and the charge and caution statement.

**Defence Counsel:** I have no objection.

**Court:** They are received as part of the facts and are marked P. Ex.1, P. Ex.2 and P. Ex.3 respectively.

.....  
Stephen Mubiru  
Judge  
9<sup>th</sup> July, 2020.

**State Attorney:** the aggravating factors are that the convict was armed with a deadly weapon.

**Counsel for the accused:** the mitigation is that he readily pleaded guilty, he is a first time offender, he is youthful at 18 years of age and is remorseful.

5 **Accused:** I have nothing to add.

### **SENTENCE AND REASONS FOR THE SENTENCE**

10 Before sentencing the convict, it is necessary to make an age determination as to what his true age was at the time he committed the offence. According to section 107 (1) of *The Children Act*, where a person charged with an offence is brought before any court otherwise than for the purpose of giving evidence and it appears to the court that he or she is under eighteen years of age, the court shall make an inquiry as to the age of that person. In making that inquiry, the court may take any evidence, including medical evidence, which it may require.

15 In the charge sheet preferred on 20<sup>th</sup> June, 2017, the convict was charged as an adult aged 18 years. Upon medical examination done on the same day (exhibit P. Ex.2), the examining Medical Officer opined that the convict was 15 years based on his physical and dental assessment. While the general physical development of a person, including height, weight, secondary sexual  
20 characteristics are helpful in the estimation and determination of that person's age, eruption and maturity of teeth are quite reliable data too for estimation of age, the evidence in this case is most unsatisfactory.

25 Medical evidence of this type as to age is from its very nature based upon estimates and cannot be relied upon to determine with precision the exact age of a person (see *Sarkar on Evidence*, 9<sup>th</sup> Edn. at p. 443). A doctor's opinion as to the age of a person based on his or her height, weight and teeth, on its own, does not amount to legal proof of the age of that person. Such evidence alone might not be sufficient to establish a person's exact age. In borderline cases such as this, age determination by clinical examination done by doctors may not be conclusive.

30 In any event, even the more reliable age determination method of X-rays interpreted by an expert radiologist based on the developments of the bones, and epiphyses which have in fact, taken

place in the subject, as revealed in X-ray photographs, is not infallible. Although reputed to be more scientific and accurate, age determination based on the developments of the bones too is renowned for being susceptible to a two year margin of error. It is so well known as to be within the judicial knowledge of the court that, even with the aid of X-rays, age cannot be assessed exactly (see *Sangu and another v. Republic* [1971] 1 EA 539 at 541). There is consequently a real doubt in this case as to whether the convict had attained the age of 18 years at the date of the offence. It is an established practice in criminal trials for courts to construe evidential ambiguities in favour of the accused. It is for that reason that the convict is hereby given the benefit of that doubt as to his age at the time he committed the offence. In the light of the available evidence and of the impression which I myself have formed from his appearance and demeanour in court, I am not satisfied beyond reasonable doubt that the accused had attained the age of 18 years by 12<sup>th</sup> June, 2017, and accordingly I hold so.

Section 108 (1) of the Act provides that the age presumed or declared by the court to be the age of that person shall be deemed to be that person's true age for the purposes of the proceedings. According to section 94 (1) (d) of *The Children Act*, where the charges have been admitted or proved against a child, the court may order detention of the child, in the case of an offence punishable by death, for a maximum period of three years. In the instant case, although he has been convicted as an adult, the accused was a child at the time he committed the offence and therefore would have been liable to a period of detention not exceeding three years.

In accordance with Article 23 (8) of the Constitution and Regulation 15 (2) of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*, to the effect that the court should deduct the period spent on remand from the sentence considered appropriate, after all factors have been taken into account, and section 94 (3) of *The Children Act*, to the effect that where a child has been remanded in custody prior to an order of detention being made in respect of the child, the period spent on remand shall be taken into consideration, I note that the convict was charged 5<sup>th</sup> July, 2017 and been in custody since then, a period of over three years.

Even when considered against the maximum detention period of three years for juveniles as the punishment befitting the convict for offences punishable by death, which the current offence is not, the convict has been on remand for a period has exceeded the maximum period of time for which he would have been incarcerated had the trial been conducted expeditiously. Having taken  
5 into account that period, I find that the “time served” is an appropriate punishment for the convict. He should accordingly be set free forthwith unless he is being held for other lawful reason.

Having been convicted and sentenced on basis of his own plea of guilty, the convict is advised  
10 that he has a right of appeal against the legality and severity of that order, within a period of fourteen days.

Dated at Gulu this 9<sup>th</sup> day of July, 2020.

.....  
Stephen Mubiru,  
Judge.  
9<sup>th</sup> July, 2020.

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**To whom it may concern**

**CERTIFICATE OF DISCHARGE**

**THIS IS TO CERTIFY** that on this **9<sup>th</sup>** day of **JULY, 2020** **PEKO STEPHEN** the **2<sup>nd</sup>** Prisoner in the above mentioned case appeared before me: Hon. Justice **STEPHEN MUBIRU, a Judge of the High Court of Uganda**, Indicted with the offence of **AGGRAVATED ROBBERY C/s 285 and 286 (2)** of The Penal Code Act, in a plea bargaining session.

He has however been **DISCHARGED** for “Time Served” on account of the fact that the period already served on remand awaiting trial or a plea of guilty is sufficient punishment for the offence in the light of his antecedents and the circumstances of the offence for which he has pleaded guilty and convicted.

**GIVEN** under my Hand and the Seal of the court this **9<sup>th</sup>** day of **JULY, 2020**.

.....  
**JUDGE**