

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CRIMINAL DIVISION

**CRIMINAL APPEAL NOS.61 OF 2013, (*Muwonge Abdu -VS- Uganda*); 65 of 2013 (*Tebusweke -VS- Uganda*); 68 of 2013 (*Mubiru Ali -VS- Uganda*)
(*Arising from Criminal Case No.1698 of 2012 from Makindye Chief Magistrate's Court*)**

A1. MUWONGE ABDUL A2. TEBUSWEKE HASSAN A3. MUBIRU ALI	}	:.....APPELLANTS
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VERSUS

UGANDA	:.....	RESPONDENT
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JUDGMENT BY HON. MR. JUSTICE JOSEPH MURANGIRA

1. Introduction

- 1.1** The 1st appellant is represented by M/S Sserwadda & Co. Advocates in his appeal No. 61 of 2013 he filed against the respondent. Whereas, the 2nd appellant is represented by M/S Lukwago & Co. Advocates in his appeal No.65 of 2013 against the respondent. And whereas, the 3rd appellant is represented by Mungoma Justin & Advocates in his appeal No.68 of 2013 against the respondent.
- 1.2** The respondent is presented by the Director of Public Prosecutions (DDP). Ms. Masinde Barbra, State Attorney from DDP represented

the respondent. She vehemently opposed the three separate appeals by the appellants.

- 1.3** When the three appeals came up for hearing on 23rd March, 2014, Counsel for parties by consent, the three separate appeals were consolidated. However, each appellant filed his own Submissions, but the respondent filed her written Submissions in reply to all the Submissions by each appellant.

2. The facts of the consolidated appeals.

- 2.1** The complainant, Wambaka Kosea's house was broken into on the 18th October, 2012 by four assailants who robbed him of several properties and also raped his wife at gun point. Among the properties stolen were three phones of the complainant, one of which was a Samsung Galaxy G note and the other a Nokia with a touch screen. His vehicle No.UAP 189V was also vandalized and different carpets stolen. That it was some of these properties that were found with the appellants the following day. The appellants were charged with receiving stolen property contrary to Section 314 (1) of the Penal Code Act. Each appellant was found guilty, convicted and sentenced to ten (10) years imprisonment.

Each appellant was dissatisfied with the judgment and orders of the Trial Chief Magistrate of Makindye, Her Worship Esther Nambayo, passed on 24th October, 2013, appealed to this Court. Hence the appeal of each appellant.

2.2 Grounds of the consolidated appeals

2.2.1 The appeal by Mr. Muwonge Abdul is based on the following grounds of appeal:

- 1. That the learned trial Chief Magistrate erred in law and fact when she failed to properly evaluate the evidence adduced thus arriving at an erroneous decision.**
- 2. That the learned trial Chief Magistrate erred in law and fact when she failed to appreciate that the appellant got connected to the alleged stolen spare parts innocently.**
- 3. That the learned trial Chief Magistrate erred in law and fact when she admitted in evidence during the defence case police statements made by the accused persons without establishing how they were made.**

4. **That the learned trial Chief Magistrate erred in law and in fact when he passed an excessive and harsh sentence.**

The 1st appellant proposed that the appeal be allowed and the judgment of the lower Court be set aside, and in the alternative and without prejudice to the foregoing, the sentence be reduced.

2.2.2 The appeal of the 2nd appellant, Tebusweke Hassan is based on the following 5 grounds:-

1. **The learned Chief Magistrate erred in law and fact when she failed to properly evaluate the evidence on record relating to the participation of the appellant thus arriving at a wrong and erroneous decision that the appellant committed the offence.**
2. **The learned Chief Magistrate erred in law and fact when she convicted the appellant on the weakness of his defence rather than the strength of the respondent's evidence.**
3. **The learned Chief Magistrate erred in law and fact when she admitted in evidence during the defence case the police statements made by the accused persons without establishing how they were made.**

4. The learned Chief Magistrate erred in law and fact when she heavily relied at events that took place at Wambuka's home as a basis for passing an excessive and harsh sentence against the appellant.
5. The learned Chief Magistrate erred in law and fact when she sentenced the appellant to an excessive and harsh sentence.

It is proposed by the 2nd appellant that:-

- (a) This appeal be allowed.
- (b) The judgment and sentence by the Chief Magistrate Magistrate's Court of Makindye be set aside.
- (c) In the alternative but entirely without prejudice to the foregoing, the sentence of 10 years' imprisonment be reduced.

2.2.3 The appeal by Mubiru Ali is based on the following grounds, that:-

1. The learned Chief Magistrate erred in law and fact when she failed to give proper consideration to the defence.
2. The learned Chief Magistrate erred in law and fact when she misdirected herself and came to conclusions which were completely not supported by the evidence.

3. **The learned Chief Magistrate erred in law and fact when she failed to appropriately evaluate the circumstantial evidence in regard to the participation of the appellant and came to a wrong conclusion.**
4. **The conviction and sentence handed down on the appellant is too harsh in the circumstances.**

It is proposed by 3rd the appellant that conviction and sentence of the appellant be quashed and set aside, respectively.

3. The appellants' case.

3.1 The 1st appellants, (Muwonge Abdul) case.

3.1.1 In his written submissions, Counsel for the 1st appellant argued grounds 1 and 4 of appeal. He abandoned grounds 2 and 3 of appeal. Accordingly, therefore, grounds 2 and 3 of appeal stand dismissed.

On ground 1 of appeal as stated hereinabove, Counsel for the 1st appellant in his Submissions faulted the trial Chief Magistrate on her failure to evaluate evidence on record thus coming to a wrong conclusion. In his submissions, Counsel for the 1st appellant submitted that the prosecution

did not prove that the property stolen belonged to Wambuka Kosea(PW1). That the property allegedly found in Muwonge Abdul'spossession were not identified by the prosecution witnesses during the trial, and that therefore, their chain of evidence was broken when they were returned back to the victim before trial. That without clear evidence of identification of the spare parts allegedly found in Muwonge Abdul's possession as those stolen from the victim, a conviction for receiving stolen property can't stand.

Counsel for the 1st appellant, further submitted that on evaluation of PW1's and PW2's evidence, that the prosecution evidence introduced in various people connected to the alleged stolen property who were not brought to Court to testify and complete the chain of movement of the alleged stolen property. That, so any evidence attributed to that contact person, whose identity is not known and was not called as a witness is hearsay and inadmissible. That it was wrong for the trial Chief Magistrate to rely on such in admissible evidence to convict and sentence the 1st appellant. That the conclusion of the trial Chief Magistrate was not based on the evidence on record. In his submissions Counsel for the 1st

appellant endeavoured to evaluate the evidence on record. He concluded that the trial Chief Magistrate failed to evaluate the evidence on record and hence arrived at a wrong decision.

On ground 4 of appeal, which is the sentence being harsh and excessive. Counsel for the 1st appellant in his submissions criticized the trial Chief Magistrate for passing a harsh and excessive sentence of 10 (ten) years imprisonment without any justifiable grounds.

Finally, he pray that the appeal be allowed, conviction quashed and sentence set aside.

3.1.2 Counsel for the respondent in her reply to the 1st appellant's Counsel's submissions, supported the judgment, conviction and sentence of the trial Chief Magistrate. In her submissions, she too, evaluated the evidence on record. She prayed that the 1st appellant's appeal be dismissed, the conviction and sentence of the trial Court be uphold.

3.2 The 2nd appellant's (Tebusweke Hassan) case.

3.2.1 In his written submissions, Counsel for the 2nd appellant argued grounds 1, 2 and 3 of appeal together and grounds 4 and 5 jointly.

On grounds 1,2 and 3 of appeal, Counsel for the 2nd appellant submitted that according to the evidence on record none of the prosecution witnesses did adduce cogent evidence to prove beyond reasonable doubt that the 2nd appellant participated in the commission of the offence and that therefore the trial Chief Magistrate failed to properly evaluate the evidence on record relating to participation of the appellant thus arriving at a wrong and erroneous decision that the 2nd appellant committed the offence. That no evidence was adduced to prove that the buttons (switches) for which the 2nd appellant was convicted of were stolen from the complainant was the owner of the said buttons.

Counsel for the 2nd appellant, further submitted that the Chain of evidence was broken when the allegedly stolen items were returned to the complainant before the same could be identified by the owner in Court. That the Court missed the opportunity of seeing these items being identified before it which could assist it in drawing its

conclusion that the items allegedly found with the 2nd appellant are the exact items stolen and identified by the owner. He continued to submit that, the identification of the photographs of the items taken by PW3, No. 19259 D/Sgt Namwanza Isaac is hearsay. That as he was not the owner of the items photographed. That to make matters worse none of the arresting officers were brought to Court to confirm that the switches appearing on photographs 8 taken by PW3 are the buttons recovered from the appellant on being arrested. He finally submitted that the prosecution failed to prove the offence charged against the 2nd appellant beyond doubt.

On grounds 4 and 5 of appeal, Counsel for the 2nd appellant in his submissions faulted the trial Chief magistrate for passing a harsh and excessive sentence of 10 (ten) years against the 2nd appellant without any supporting reasons.

He finally prayed that the 2nd appellant's appeal be allowed, conviction quashed and sentence set aside.

Counsel for the respondent in her submissions in reply did not agree with the evaluation and conclusions on the prosecution and defence evidence on record. She submitted and relied on the evidence on record while supporting the judgment, conviction and sentence of the trial Chief Magistrate. She prayed that the 2nd appellant's appeal be dismissed, the conviction and sentence of the trial Court be upheld.

3.3 The 3rd appellant's (Mubiru Ali) case.

3.3.1 Counsel for the 3rd appellant argued grounds 1 and 2 of appeal together, grounds 3, 4 of appeal separately. On grounds 1 and 2 of appeal, Counsel for the 3rd appellant argued that the trial Chief Magistrate ignored the evidence given by the 3rd appellant and that instead relied on the hearsay evidence and that he was wrongly convicted. That the evidence of the 3rd appellant was not challenged by the respondent at page 22 of the trial Court proceedings. That there was no evidence adduced to prove that the 3rd appellant had possession or was in control of the phones. That, Counsel for the 3rd appellant submitted that the trial Chief Magistrate misdirected herself to the prejudice of the appellant.

On ground 3 of appeal, Counsel for the 3rd appellant submitted that no evidence was adduced by the prosecution to prove that the 3rd appellant bought the stolen phones. On ground 4 of appeal, Counsel for the 3rd appellant submitted that the sentence of 10 (ten) years imprisonment was too harsh and excessive. That according to the circumstances of the case against the 3rd appellant, that he deserved a sentence of caution. But that otherwise the 3rd appellant should have been acquitted of the charged offence.

He finally, in his submissions, prayed that the appeal be allowed, conviction quashed and sentence of 10 years imprisonment be set aside.

In response to the 3rd appellant's Counsel's submissions, Counsel for the respondent did not agree to his evaluation, analysis and conclusions he made when faulting the trial Chief Magistrate. In her submissions, she evaluated the evidence on record, and argued that the trial Chief Magistrate's judgment, convictions are supported by the evidence on record. That, in passing the sentence of ten (10) years imprisonment the trial Chief Magistrate properly considered the mitigating factors on the Court record. She prayed that the

appeal be dismissed, the convictions and sentence of the trial Chief Magistrate be upheld.

4. Resolution of the joint appeals of the appellants by Court.

4.1 I agree with the position of the law in regard to the duties of the 1st appellate Court as stated in their respective submissions by each Counsel for the parties. I wish also to emphasize the law on the duties of the 1st appellate Court.

This Court being the 1st appellate Court in this matter is enjoined to re-appraise all the evidence which was adduced before the trial Court and come to its own conclusion as to whether the decision of the lower Court should be upheld or not. In so doing, the 1st appellate Court must always bear in mind that it did not have the opportunity which the trial Court had of seeing the witnesses give evidence in Court and of assessing their demeanour. For this legal proposition see the case of **Bogere Moses and Kamba Robert -VS- Uganda, Supreme Court case appeal No. 1 of 1997** whereby it was held that:-

“To hold that such proof has been achieved, the Court must not base itself on the isolated evaluation of the prosecution evidence alone, but must base itself upon the evaluation of the evidence as a whole.”

And in the case of **Bogere Charles -VS- Uganda Criminal appeal No.10 of 1998, Supreme Court**, it was held that **“the 1st appellate Court has the duty to properly scrutinize, re-evaluate the evidence of both the prosecution and the defence and reach its own conclusion.”**

4.2 In the instant appeal, I have scrutinized and re-evaluated both the prosecution and the defence evidence on the Court record. I also considered and analysed the law and the submissions by each appellant and the respondent in resolving these consolidated appeals. I have not left any stone unturned in my re-evaluation of the evidence on record.

Consequent to the above, I have analysed the grounds of appeal set out by each appellant in his memorandum of appeal and I am of the considered opinion that the grounds of appeal set out by each

appellant thereof are interrelated. Therefore, in order to resolve the consolidated appeals in one judgment, like this one, I shall consolidate the said grounds of appeal in a summary form as follows:-

1. That the learned trial Chief Magistrate erred in law and fact when she failed to properly evaluate the evidence adduced thereby arriving at a wrong decision.

2. The learned trial Chief Magistrate erred in law and fact when she passed an excessive and harsh sentence of 10 (ten) years imprisonment against each appellant.

4.4 On ground observe:- Failure to properly evaluate the evidence by the trial Chief Magistrate.

4.4.1. 1st appellant, Muwonge Abdul. Counsel for the 1st appellant submitted that no evidence was brought to show that PW1 was the owner of the car in issue, the spare parts of which were found with the 1st appellant. That whereas the complainant said that his side mirrors had serial Nos: iie 13010408j 993, Counsel for the 1st appellant contended that the same were not identified by PW1 in Court. PW3 the police officer who photographed them and through

whom they were tendered in Court said they were labelled with the number UAP 189V. PW1, the complainant, gave evidence against the 1st appellant in detail. He said **at page 6 paragraph 3 of the proceedings** that when the robbers attached him and his wife, they asked for the car keys. That his vehicle's spare parts were stolen. This evidence was corroborated by the evidence of PW2 **at page 9, paragraph 3** of the lower Court record who testified that on visiting the complainant's home the following day, he saw the vandalized Pajero and it was missing parts including the side mirrors. That these were parts of PW1's car Reg. No. UAP 189V that were found with the 1st appellant as testified by PW2. According to the available evidence on record these said spare parts were not claimed by the appellants in their respective evidence in defence.

At page 14, 2nd paragraph of the lower Court proceedings, PW1 stated that Muwonge Abdul was arrested with side mirrors of his vandalized car after he was robbed. At page 15, 3rd paragraph of the lower Court proceedings, PW1 stated that Muwonge Abdul was not got with his side mirrors in his presence. At page 16, of the lower

Court proceedings PW1 gave evidence on his properties that were recovered from the appellants' that they were exhibited at the police and later returned to him. PW2 and PW3 confirmed PW1's story. In cross-examination the 1st appellant did not put any questions to PW1, PW2 and PW3. This is an indication that the said prosecution witnesses told Court the truth.

In his defence at page 26, last paragraph of the lower Court proceedings, the 1st appellant gave good evidence in favour of the prosecution, when he stated:

“When I called him he said he gave me the things, but it is not them also who bought them. That it is Bosco who had them. I told the Police that it is Bosco who sold them to Kyakalenzi, buttons were I sold to Hassan, the radio to Iddi, TV was sold to some boy. I notified Magara. I also notified the Kiseka Market Public Relations Officer and the Kiseka Chairman. Defence knew Hassan or Bosco. They were called but Bosco denied. Later, upon the arrest of Hassan, he led the Police to his shop at Kireka Market and brought

the buttons. It is Hassan Tebusweke who presented the buttons to the police from his shop at Kiseka (SIC)."

Then **at page 27, 1st paragraph** beginning from **3rd line** from top of the lower Court proceedings the 1st appellant stated:

"The items I was got with Wambaka said all the side mirrors were his, but Pajero side mirrors are all similar. I handed over the items. Hassan is the one who presented the switches. The items we were not with at Katwe Police Station "

Still at page 27 in cross-examination, bullet 9, 1st appellant stated:-

"At my arrest I handed over side mirrors and others."

From the evidence on Court record there is sufficient evidence to show that the said items were found in the possession of the 1st appellant. I also find that there was no break in the Chain of evidence because even though the said exhibits were handed over to PW1, the same had already been photographed by PW3 which photographs were tendered in evidence through PW3 without any

objections from the appellants. PW3's evidence was not at all challenged in cross-examination by the appellants. Above all, the 1st appellant in his testimony in defence knew all about the items that were recovered from them (appellants). There is no contention as to what items were recovered from him. Even he knew that they were exhibited at Katwe Police Station.

Further, as for the possession and knowledge on the part of the 1st appellant, it is the evidence of PW2, grace Bugembe, **at page 10, 4th paragraph of the Court proceedings** that he used one Kassera to lure the 1st appellant to come and collect money so that he could arrest him. It is also the evidence of PW1, the complainant **at page 7 of the proceedings that** subsequent to the 1st appellant's arrest with the side mirrors, the 1st appellant also led to the recovery of the other stolen parts like the castle box, radio, headlamp, marked with the complainant's car registration number. And whereas, **PW3 at pages 12 and 13 of the lower Court proceedings** he testified that he photographed PW1's recovered stolen items he found at the police and that Photograph /shows the Tear review/side mirrors of the

vandalised car with number UAP 189V. Again photograph 6 shows the headlamp with No.UAP 189V.

Furtherabove, I would agree as submitted by Counsel for the 1st appellant that the Pajero side mirrors all look the same, but I hasten to add that there cannot be side mirrors, headlamps of the Pajero, vehicle with the very complainants car registration number. From that evidence, I am of the considered opinion that the 1st appellant knew that the said spare parts were stolen or should have had reason to believe that the same spare parts were feloniously obtained. This is further supported by the evidence of PW2 **at page 10 and paragraph of the lower Court proceedings**, that when he asked the 1st appellant about the Pajero, the 1st appellant admitted that he knew about it. With due respect to Counsel for the 1st appellant that was an admission and not a confession and, therefore, I make a finding that the issue of the rank of the Police Officer (PW2) does not come into play.

In sum total, **at pages 27 and 28 of the record of the lower Court** the trial Chief Magistrate considered and properly evaluated the evidence on record, and specifically in paragraph 3 where she found that the prosecution had proved all the ingredients of the offence charged against the 1st appellant. In the same vein, I have reappraised myself on the evidence on the Court record as I have done hereinabove in this judgment, and I am convinced that the prosecution adduced enough evidence which proved the prosecution's case against the 1st appellant beyond reasonable doubt.

4.4.2 The 2nd appellant, Tebusweke Hassan.

Counsel for the 2nd appellant submitted that the prosecution did not adduce enough evidence to incriminate A2 (2nd appellant) with the commission of the offence. He further submitted that there was no evidence to prove that the buttons (switches) with which the 2nd appellant was found with belonged to PW1 (the complainant). **At page 14, 2nd paragraph of the** lower Court proceedings, PW1 testified that Tebusweke Hassan was arrested with his buttons (switches) of

his car. In cross-examination by the 2nd appellant at **page 16 of the lower Court proceedings**, PW1 stated:

“Grace a security operative and others are the ones who got you with the items. They got you at Kiseka Market with the switches.”

This shows that the evidence of PW1 was never challenged by the 2nd appellant in cross-examination.

Again, it is the testimony of PW2 at **page 9, 3rd paragraph of the lower Court proceedings** that on getting the report of the complainant’s home he found the Pajero with missing several parts including the buttons (switches). **At page 11, 3rd paragraph** in cross-examination of the lower Court proceedings, PW2 also stated that on arrest of the 2nd appellant, the 2nd appellant sent for the buttons (switches) and they were brought to PW2. In defence, the evidence of the 1st appellant clearly shows that the switches (buttons) of PW1 were found with the 2nd appellant. In his defence the 2nd appellant denied the charge in total. However, I hasten to observe that during his defence his demeanour came into play. At page 17 of the lower Court proceedings, last paragraph:-

“State: I pray that Court takes note of the witness’ evasive character.

Court: Notes that the witness is very reluctant to answer questions. He takes very long to answer the questions. He is counting his fingers and looking away through the window.”

At page 18, 1st line from top of the lower Court proceedings, I note that the 2nd appellant’s police statements were allowed in evidence as Exh. P2 (a) dated 1/11/2012. Indeed, I agree with Counsel for the 2nd appellant that the said police statements recorded from the 2nd appellant were irregularly admitted in evidence during the cross-examination of the 2nd appellant. However, I hasten to add that I have perused the trial Chief Magistrate’s Judgment on Court record and noted that in her findings therein, she never relied on the said Exhibits and the demeanour of the 2nd appellant as recorded in the Court proceedings.

In the premises, after re-appraising myself on the evidence on the Court proceedings of the lower Court, I find that there is

overwhelming prosecution evidence on record that proved the offence charged against the 2nd appellant. Therefore, I agree with the trial Chief Magistrate in her findings at page 28, 4th paragraph of her judgment.

4.4.3. The 3rd appellant, Mubiru Ali.

Counsel for the 3rd appellant does not contest in his submissions that the said phones were stolen. His argument is that there is no evidence on Court record to show that the 3rd appellant was in possession of the said phones and that he had knowledge that the same said phones were feloniously obtained.

It is the testimony of PW2 at page 10, 4th paragraph of the lower Court proceedings that he got information that the stolen phones had been sold to the 3rd appellant. PW2 proceeded and arrested the 3rd appellant and that when PW2 asked him about the phones, that the 3rd appellant replied that they had bought them without knowing they were stolen. That he sold/gave them to Hadadi at Mutaasa Kafero who in turn sent them to the police. In defence, the 3rd appellant at page 20 of the lower Court proceedings denies having

bought the phones and testified that he deals in new phones. That Hadadi promised him a commission. From the evidence on record and the way the trial Chief Magistrate analysed and evaluated the prosecution evidence in relation to the 3rd appellant, I find it hard to believe the 3rd appellant's story in defence. It is my finding is that regard that it is impossible to believe that the one who was purchasing the phones was the one going to give a commission, rather than the one who were looking for a purchaser, that is, Kijambu and his friend. My interpretation of the whole scenario is that in fact the 3rd appellant was dealing with Hadida to sell the said phones, and in this case the 3rd appellant had knowledge that they said phones were stolen because he only knew Kijambu as a worker at the video hall and could therefore have no capacity to purchase a Galaxy S3 and a Samsung 2005 series.

I, therefore, agree with the trial Chief Magistrate that in her holding at page 29 3rd paragraph of the lower Court proceeding that the 3rd appellant had an interest and knowledge in the said phones as to go so far to look for a buyer, and that is, why he was expecting a

commission. Thus, the trial Chief Magistrate properly evaluated the evidence on Court record and properly convicted the 3rd appellant of the charged offence.

4.4.4 In the result I answer the said summed up ground of appeal in favour of the respondent.

4.5 Ground 2 on sentence of 10 (ten) years imprisonment passed on each appellant.

Counsel for the appellants criticized the trial Chief Magistrate and submitted that she passed a harsh and excessive sentence against the appellants. Counsel for the respondent in reply supports the sentence of 10 (ten) years imprisonment as appropriate in the circumstances of this case. She submitted that the sentence was not harsh and excessive considering that the maximum sentence of the charged offence is 14 years imprisonment and that the same sentence should be upheld.

It is trite law that the sentencing process is an exercise of discretion and it can only be interfered with when the trial Court acted on a wrong principle or the sentence is manifestly excessive or too low or is harsh.

I have looked at the reasons given by the trial Chief Magistrate when passing the sentence. Certainly, in passing the sentence, the trial Chief Magistrate followed the right principles. However, I am afraid, the sentence of 10 (ten) years imprisonment in the circumstances of this case is harsh and excessive. At page 23 of the record of the lower Court proceedings, the convicts were first offenders; they prayed for mercy and were remorseful. However, the trial Chief Magistrate considered, at page 24 of the lower Court proceedings the following factors:-

- “1. The heinous acts done at the scene where the items got with the convicts were got. The victims were robbed at gun point and the wife raped.**
- 2. The convicts being part of the gang of the robbers because it is one of the robbers already convicted now by the High Court (Bob) who identified the convicts now before Court. Acts done**

at the scene of the robbery were so heinous to rob at gun point and rape. It is important that this Court gives a sentence that will enable the convicts to reflect on their actions and devise better means of survival, these convicts being part of the gang. Such businesses should be made a risky venture. Therefore, I find it proper to sentence each convict to 10 (ten) years imprisonment.”

I note with concern, therefore, that the trial Chief Magistrate considered extraneous factors that are not concerned or connected to the case at hand on a basis for sentencing the accused/convicts, the way she did. For the offence of receiving or retaining stolen property, her considerations and reasons for sentence should have stopped at the point of receiving or/and retaining stolen property. Further, I am of the considered view that the trial Chief Magistrate erred when she gave a sentence of 10 years imprisonment based on the events that took place during the robbery and rape. There is no evidence on record that shows that the appellants are part of the gang that robbed PW1 and raped his wife. In that circumstance, I

hold that the sentence passed by the trial Chief Magistrate against the appellants was harsh and excessive. Thus, there is need for this 1st appellate Court to interfere with the sentence of the trial Court.

In substituting the trial Chief Magistrate's sentence of 10 years imprisonment passed on each appellant, I shall consider the mitigating factors advanced by each appellant on Court record, the facts, that each appellant is a first offender and that the items that were found with each of them were returned to the owner (PW1). Again I shall also consider that there is need for the Court to pass sentences commensurate with the charged offence, and to make the business of receiving or/and retaining stolen property a risky venture. In the premises, ground 2 of appeal is allowed in part.

5. Conclusion

In the result and for the reasons given hereinabove in this judgment the three consolidated appeals have no merit. The appeal of each appellant is hereby dismissed. Judgment is entered in the following terms:-

(a) The three consolidated appeals are dismissed.

(b) The coordination on each appellant by the lower Court is upheld.

(c) The sentence of 10 (ten) years imprisonment passed on each appellant is hereby set aside, and substituted with a sentence of 2 (two) years imprisonment, for each convict (appellant) beginning from the time they started serving the sentence of the trial Court.

Dated at Kampala this 30th day of May, 2014.

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Joseph Murangira

Judge.

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CRIMINAL DIVISION

**CRIMINAL APPEAL NO.61 OF 2013, (*Muwonge Abdu -VS- Uganda*); 65 of 2013 (*Tebusweke -VS- Uganda*); 68 of 2013 (*Mubiru Ali -VS- Uganda*)
(*Arising from Criminal Case No.1698 of 2012 from Makindye Chief Magistrate's Court*)**

A1. MUWONGE ABDUL

A2. TEBUSWEKE HASSAN

A3. MUBIRU ALI

}

.....APPELLANTS

VERSUS

UGANDA

.....RESPONDENT

COURT REPRESENTATION

Mr. Mungoma T. for A3.

I am holding brief for Mr. Serwadda for A1 and Mr. C. Katumba for A2

The state is represented by Mr. Aliwaali Kizito, State Attorney.

We are ready to receive the judgment.

The appellants are in Court.

Ms. Margaret Kakungulu the Clerk is in Court.

Court: Judgment is delivered to the parties. Right of Appeal is explained to the parties.

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Joseph Murangira

Judge

30/5/2014.