

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
CRIMINAL CASE No. 0113 OF 2014

UGANDA **PROSECUTOR**

VERSUS

ORYEMA ISMAIL **ACCUSED**

Before: Hon Justice Stephen Mubiru.

SENTENCE AND REASONS FOR SENTENCE

This case came up on 26th September 2016, in a special session for plea bargaining. The accused was indicted with the offence of Aggravated Robbery c/s 285 and 286 (2) of The *Penal Code Act*. It was alleged that during the night of 24th November 2013 at Opano village in Nebbi District, the accused and others at large robbed Chelibe Andrew, of his motorcycle Reg. No. UDE 734 XL and at or immediately before or immediately after the said robbery, used a deadly weapon, to wit a gun, on the said Chelibe Andrew.

When the case was called, the learned State Attorney, Mr. Emmanuel Pirimba reported that he had successfully negotiated a plea bargain with the accused and his counsel. The court then allowed the State Attorney to introduce the plea agreement and obtained confirmation of this fact from defence counsel on state brief, Mr. Samuel Ondoma. The court then went ahead to ascertain that the accused had full understanding of what a guilty plea means and its consequences, the voluntariness of the accused's consent to the bargain and appreciation of its implication in terms of waiver of the constitutional rights specified in the first section of the plea agreement. The Court being satisfied that there was a factual basis for the plea, and having made the finding that the accused made a knowing, voluntary, and intelligent plea bargain, and after he had executed a confirmation of the agreement, went ahead to receive the agreement to form part of the record. The accused was then allowed to take plea whereupon a plea of guilty was entered.

The court then invited the learned State Attorney to narrate the factual basis for the guilty plea, whereupon he narrated the following facts; the complainant was an employee of Centenary Bank Nebbi Branch. He was allocated motorcycle Reg. No. UDE 734 XL Honda. On 24th November 2013, the complainant parked his motorcycle at his home after work. During the night he was awakened by noise coming from where he had parked the motorcycle. On coming out of his house, the accused and the other robbers he was with placed the complainant at gunpoint threatening to shoot him if he resisted. They took the motorcycle. The following day the complainant reported to the police. A search was mounted and information passed on to all boda-boda riders in the town. On 25th November 2013, the accused went to a mechanic to borrow a motorcycle spanner. He was suspected and was immediately arrested by civilians. They interrogated him and he admitted having stolen the motorcycle. He revealed the number plate but refused to lead them to where it was. He later persuaded to let him go and bring it. He instead decided to flee with the motorcycle in the direction of Paidha. He met one of the civilians who had been interrogating him and he fled abandoning the motorcycle. The police were alerted and the abandoned motorcycle was recovered. A search was mounted and the accused was arrested by civilians who handed him over to the police. He was charged and he admitted having committed the offence in his charge and caution statement.

Upon ascertaining from the accused that the facts as stated were correct, he was convicted on his own plea of guilty for the offence of Aggravated Robbery c/s 285 and 286 (2) of the *Penal Code Act*. In justification of the sentence of seven (7) years' imprisonment proposed in the plea agreement, the learned State Attorney adopted the aggravating factors outlined in the plea agreement which are that; - the offence is of a serious nature. It is rampant within the region and the complainant suffered a lot of mental torture following the robbery.

In his submissions in mitigation of sentence, the learned defence counsel adopted the mitigating factors outlined in the plea agreement which are that; - the accused has been on remand for nearly three years now, he is HIV positive and a llong custodial sentence will not suit his health condition. At the time of his arrest, he was a pupil at Nyacara Primary School. In his *allocutus*, he asked the court for a lenient, short custodial sentence to enable him resume his studies. The victim was not available in court to make his victim impact statement.

I have reviewed the proposed sentence of ten years' imprisonment in light of the *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*. I have also reviewed current sentencing practices for offences of this nature. In this regard, I have considered the case of *Uganda v Ongodia, H.C. Crim. Sessions Case No. 21 of 2012* where the High Court sentenced a UPDF soldier convicted of aggravated robbery to 15 years' imprisonment. He was a first offender who admitted the offence on arrest, pleaded guilty on arraignment and had spent a period of 5 years on remand. In *Kusemererwa and Another v Uganda C.A. Crim. Appeal No. 83 of 2010*, the Court of Appeal substituted a sentence of 20 years' imprisonment that had been imposed upon each of the appellants with one of 13 years' imprisonment, on grounds that it was manifestly excessive.

Having considered the sentencing guidelines and the current sentencing practice in relation to offences of this nature, and the fact that the convict has already spent nearly three years on remand (having been charged on 28th November 2013), I hereby accept the submitted plea agreement entered into by the accused, his counsel, and the State Attorney and in accordance thereto, sentence the accused to seven (7) years' imprisonment, to be served starting today.

Since the property stolen was recovered, no order of compensation will be made in the terms of section 286 (4) of the *Penal Code Act*.

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

Dated at Arua this 6th day of October, 2016.

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Stephen Mubiru
Judge.