

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
CRIMINAL CASE No. 0075 OF 2016

5 **UGANDA** **PROSECUTOR**

VERSUS

10 **OCIMA BEN** **ACCUSED**

Before: Hon Justice Stephen Mubiru.

SENTENCE AND REASONS FOR SENTENCE

When this case came up on 13th April 2017, 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*
15 *Act*. It was alleged that the accused, on 19th February 2016 behind Katrini Institute of Modern Technology in Arua District, robbed a one Osoa Peter of cash shs. 5,200/=, one Techno mobile phone, a handkerchief, one phone battery, one pair of black shoes, one pair of brown trousers and one black belt all valued at shs. 150,000/= and immediately before, during or after the robbery threatened to use a deadly weapon, to wit a knife on the said Osoa Peter.

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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. Ondoma Samuel. The court then went ahead to ascertain
25 that the accused had full understanding of the implications of a plea agreement 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
30 had executed a confirmation of the agreement, went ahead to receive the agreement to form part of the record. The Indictment was then read and explained to him whereupon he pleaded guilty.

The court then invited the learned State Attorney to narrate the factual basis for the guilty plea, whereupon he narrated the following facts; on 19th February 2016, at about 10.00 pm the victim was on his way home. When he reached Katrini Institute for Modern technology he was attacked by the accused who had a long knife and threatened to stab him if he dared to move or make an alarm. He ordered him to remove all items he had. He handed over the items mentioned in the indictment. The accused then left. The victim reported the matter to the police and on the 4th March 2016 the victim saw the accused wearing his trousers and belt. When asked where he got them he could not explain. He was arrested and the two items were exhibited. He was charged. The accused was examined on P.F 24A. He was found to be 22 years old with normal mental status. Police form 24A in respect of the accused together with the exhibit slip in respect of the items recovered, were tendered as part of the facts.

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 eight (8) years' imprisonment proposed in the plea agreement, the learned State Attorney adopted the aggravating factors outlined in the plea agreement which are that; - the offences are rampant in the region and attract a maximum penalty of death on conviction. A deadly weapon was used in the commission of the offence. The complainant lost even the pair of trousers he was wearing, at the hands of the accused, thus humiliating him. He deserves a deterrent sentence. The learned defence counsel adopted the mitigating factors outlined in the plea agreement which are that; - the accused is a disabled person as a result of a polio attack during childhood, he has readily pleaded guilty and has no previous conviction. He is a first offender and has a wife and was looking after twelve children. He is remorseful and apologetic for what he did. In his *allocutus*, the accused stated that he is alone since his father died, his mother is weak and it was him to find food for her. He was still in school at Ombatini Primary School. The complainant was not available in court to make his victim impact statement.

The offence for which the accused was convicted is punishable by the maximum penalty of death as provided for under section 286 (2) of the *Penal Code Act*. However, this represents the maximum sentence, which is usually reserved for the worst of the worst cases of Aggravated

Robbery. I do not consider this within the category of the most extreme cases of Aggravated Robbery. I have considered the extremely grave circumstances specified in Regulation 31 of The Constitution (*Sentencing Guidelines for Courts of Judicature*) (*Practice*) *Directions, 2013* that would justify the imposition of the death penalty. The offence appears to have been premeditated
5 or planned, and the rampant nature of the offence in the area or community. Although death was a very likely immediate consequence of the offence, since there was no direct injury inflicted on the complainant, I have for that reason discounted the death sentence.

Where the death penalty is not imposed, the next option in terms of gravity of sentence is that of life imprisonment. Some of the aggravating factors prescribed by Regulation 31 of the Sentencing
10 Guidelines mentioned above would justify the imposition of a sentence of life imprisonment. However, by reason of the fact that the accused was aged 22 years and hence a relatively young man capable of reform, at the time; he did not inflict any physical injury on the victim and further that some of the property stolen was recovered, I do not consider the sentence of life imprisonment to be appropriate in this case.

15 Although neither the death penalty nor a sentence of life imprisonment has been imposed, the circumstances in which the offence was committed are sufficiently grave to warrant a deterrent custodial sentence. I have reviewed the proposed sentence of eight years' imprisonment in light of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*. The starting point in the determination of a custodial sentence for offences of Aggravated
20 Robbery has been prescribed by Item 4 of Part I (under Sentencing ranges - Sentencing range in capital offences) of the Third Schedule of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013* as 35 years' imprisonment. According to *Ninsiima v. Uganda Crim. Appeal No. 180 of 2010*, these guidelines have to be applied taking into account past precedents of Court, decisions where the facts have a resemblance to the case under trial. A
25 Judge can in some circumstances depart from the sentencing guidelines but is under a duty to explain reasons for doing so.

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
30 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 slightly over one year on remand, (having been charged and remanded on 16th March 2016), 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 a term of imprisonment of eight (8) years, to be served starting today.

Section 286 (4) of the *Penal Code Act*, enjoins the court to make an order of compensation provided that before making such an order, there must be evidence before Court as to the loss suffered by the person to whom the compensation is to be paid. In this case, the convict has admitted having robbed property worth Shs. 150,000/= from Osoa Peter, most of which has never been recovered. The accused in addition is therefore ordered to compensate the complainant Osoa Peter, in the amount of Shs. 150,000/= within a period of three months from the date of this sentence. In the event of his failure so to compensate the victim as directed, the accused shall serve an additional one year's imprisonment.

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.

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Dated at Arua this 19th day of April, 2017.

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Stephen Mubiru,
Judge.
19.04.2017.