

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
CRIMINAL CASE No. 0114 OF 2016

5 **UGANDA** **PROSECUTOR**

VERSUS

10 **A1. BRAN JUMA }
A2. AYILE ISMAIL } ACCUSED**

Before: Hon Justice Stephen Mubiru.

SENTENCE AND REASONS FOR SENTENCE

15 When this case came up on 12th April 2017, in a special session for plea bargaining. The accused was indicted with the offence of Aggravated Robbery c/s 285 and 286 (1) (b), (2) of *The Penal Code Act*. It was alleged that both accused, on 4th May 2016 at Ambayo village in Yumbe District robbed Samira Mwongeya of a numberless red Bajaj Boxer motorcycle, Engien Number DUZWELL44473, Chassis Number MD2A18AZ8EWIL-56577 valued at shs. 2,000,000/= (two
20 million shillings) and at or immediately after the robbery used a deadly weapon, to wit, a long iron bar to cause actual injury to the said Samira Mwongeya.

When the case was called, the learned State Attorney, Ms. Faidha Jamilar reported that she had successfully negotiated plea bargains with the accused and their counsel. The court then allowed
25 the State Attorney to introduce the two plea agreements and obtained confirmation of this fact from defence counsel on state brief, Mr. Okello Oyarmoi. The court then went ahead to ascertain that both 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 their constitutional rights specified in the first section of the
30 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 they had executed a confirmation of their respective agreements, went ahead to receive the

agreements to form part of the record. The indictment was then read and explained to them whereupon each of them pleaded guilty.

The court then invited the learned State Attorney to narrate the factual basis for the guilty pleas, whereupon she narrated the following facts; on 4th May 2016 at about 19.00 hrs the complainant was at Boda boda stage at Star Video Hall in Yumbe Town. He was approached by two customers. It was unregistered and red in colour. They gave him directions to their destination. The complainant realised they were not getting there. He asked for his money for the distance covered. They promised to pay from home. When they reached a slope, the complainant stopped and the two climbed down. He waited for them as they walked past the difficult area. When they got to him they hit him on the back of the head and he fell down. One of the accused jumped on the motorcycle and drove to a distance as he waited for the other struggling with the victim. He was hit the complainant a second time with an iron bar. The complainant grabbed him and made an alarm which answered by people nearby. He (A1) was arrested. He revealed the identity of the second who had fled from the scene. They were taken to the area LC1 who took them to the police post. The victim was rushed to Yumbe Hospital as he was bleeding. The accused was charged and he mentioned A2. He was arrested and the motorcycle was recovered. He admitted participation and both were charged. They were examined at Yumbe on P.F 24A and were found to be adults; AI was 34 years old and Ayile 28 years old with normal mental status. Both Police forms 24A in respect of the accused were tendered as part of the facts.

Considering the manner of the attack on the complainant and the fact that they could easily have killed him, the court cautioned the accused of the possibility of enhancement of the proposed sentence of eight (8) years' imprisonment stipulated in the plea agreement. After the accused confirmed that despite that possibility they were still willing to go ahead with the plea bargains, they were asked whether the facts as narrated were correct.

Upon ascertaining from each of the accused that the facts as stated were correct, each of them was convicted on his own plea of guilty for the offence of Aggravated Robbery c/s 285 and 286 (1) (b), (2) of the *Penal Code Act*. In justification of the sentence of eight (8) years' imprisonment proposed in the plea agreements, the learned State Attorney adopted the

aggravating factors outlined in the plea agreements 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 sustained injuries to the head inflicted with an iron bar. He was lucky to survive the attack due to the quick response of people nearby. Both
5 deserve a deterrent sentence. The learned defence counsel adopted the mitigating factors outlined in the plea agreements which are that; - the first accused is a young man at the age of 28 years, he is married with four children, he is remorseful, he is an orphan and has spent a year on remand. The second accused is aged 30 years, is remorseful, has a wife and five children to look after, he is an orphan and a first offender. In his *allocutus*, the first accused stated that he has
10 children who were in school and they are suffering at home. Their mother has left the home. There is no one to take care of them. His parents died. He prayed for mercy since he will never commit such an offence again. On his part the second accused stated that he has children in school. They are five, one in P5 and the other in P2. Their mother returned to her parents' home. His parents are dead. There is no one at home to give his children support. He prayed for only a
15 few years. In his view, one year would be sufficient for his children belong to Uganda as well and the house in which they stay is now very old. He is also sick and suffers from 3 Hernias. He prayed for lenience. The complainant was not available in court to make his victim impact statement.

20 The offence for which the accused were 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
25 *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 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, I have discounted the death sentence because the accused are first offenders, there is no evidence that the victim was maimed and the
30 property robbed was recovered.

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 Guidelines mentioned above would justify the imposition of a sentence of life imprisonment. However, by reason of the fact that the accused are aged 28 and 30 years respectively and hence
5 relatively young men capable of reform, I do not consider the sentence of life imprisonment to be appropriate in this case.

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
10 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 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.*
15 *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 Judge can in some circumstances depart from the sentencing guidelines but is under a duty to explain reasons for doing so.

20 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.*
25 *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 convicts have already spent nearly one year on
30 remand, (having been charged and remanded on 11th May 2016), I hereby reject the sentence

proposed in the submitted plea agreement entered into by the accused, his counsel, and the State Attorney and instead, sentence each of the two accused to a term of imprisonment of twelve (12) years, to be served starting today.

5 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 property robbed was recovered and the court was not furnished with evidence establishing the degree of injury sustained by the complainant. For those reasons, no order of compensation will be made.

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Having been convicted and sentenced on their own pleas of guilty, the convicts are advised that they have a right of appeal against the legality and severity of this sentence, within a period of fourteen days.

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

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Stephen Mubiru,
Judge.
19.04.2017.