

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
CRIMINAL CASE No. 0079 OF 2016

5 **UGANDA** **PROSECUTOR**

VERSUS

10 **OJANDU DAVID** **ACCUSED**

Before: Hon Justice Stephen Mubiru.

SENTENCE AND REASONS FOR SENTENCE

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 (2) of *The Penal Code*
15 *Act*. It was alleged that the accused and others still at large, on 17th November 2015 at Omugo Health Centre in Arua District robbed Andema Patrick of two computers, one hand-typewriter, solar battery, one inverter, a mobile phone and 15,000/= shillings all valued at 5,000,000/= (five million shillings) and immediately before or after the said robbery used a deadly weapon, to wit, a gun on the said Andema Patrick, a watchman of Omugo Health Centre IV and a substance that
20 made him unconscious.

When the case was called, the learned State Attorney, Ms. Faidha Jamilar reported that she 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
25 defence counsel on state brief, Mr. Okello Oyarmoi. The court then went ahead to ascertain 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 his 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
30 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 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 pleas, whereupon she narrated the following facts; on 17th November 2015 at about 4.00 am two armed men entered Omuvo Health Centre IV and attacked a watchman whom they put at gun point.

5 They opened a door and pushed him inside. A cloak was placed on his head and he became unconscious. Property mentioned in the indictment was taken out of the room. He regained consciousness after some time and he reported to his colleague and they both reported to Omugua Police post. After a tip off from the public a search was mounted and some property wad recovered from the home of the accused. He had a dug a hole in his house and placed a bed
10 over the hole. He was arrested and wad charged. He was medically examined on P.F 24A at Arua Regional Referral Hospital and was found to be 22 years old with normal mental status. The items stolen were recovered. The gun was not recovered. Police forms 24A in respect of the accused was tendered as part of the facts.

15 Considering the manner of the attack on the complainant and the fact that the accused and the rest of the assailants 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 he was still willing to go ahead with the plea bargain, he was asked whether the facts as narrated were
20 correct.

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
25 agreement, the learned State Attorney adopted the aggravating factors outlined in the plea agreement which are that; - the offence is rampant in the region and attracts a maximum penalty of death on conviction. The accused stole vital items required to run a health facility that serves the public, and the watchman was almost killed in the process. The learned defence counsel adopted the mitigating factors outlined in the plea agreement which are that; - the accused is the
30 sole breadwinner for the family, he is a young man capable of reform and has been on remand for one year and two months (having been charged and first remanded on 3rd February 2016). In

his *allocutus*, the accused stated that he has a family with three children. He was as well paying for his siblings in school. He requested to serve a few years only and to hand over the property that was not recovered. The gun used in the robbery was taken by one of the other persons involved in the robbery and he ran away with it. He is sick and he asked for mercy. The complainant was not available in court to make his victim impact statement.

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 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 is a first offender, there is no evidence that the victim was maimed and most of the 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 is aged 23 years and hence a relatively young man 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 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. 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.

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 one year and two months on remand, 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 the accused to a term of imprisonment of twelve (12) 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, most of the property robbed was recovered and the court was not furnished with evidence establishing the value of the property which remains unrecovered. For those reasons, no order of compensation will be made. Having been convicted and sentenced on his own plea of guilty, the convict is advised that he have a right of appeal against the legality and severity of this sentence, within a period of fourteen days.

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

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Stephen Mubiru,
Judge, 19.04.2017.