

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT GULU
CRIMINAL SESSIONS CASE No. 290 OF 2018

UGANDA **PROSECUTOR**

5 **VERSUS**

1.	TABU BENSON	}	
2.	RUBANGAKENE CHRISTOPHER	} ACCUSED
3.	O. R. (a juvenile)	} JUVENILE OFFENDER
4.	O. R. (a juvenile)	} JUVENILE OFFENDER
10 5.	OCAYA JACOB	} ACCUSED

Before: Hon Justice Stephen Mubiru

SENTENCE AND REASONS FOR SENTENCE

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When this case came up yesterday 8th August, 2018 for plea, one juvenile offender and two accused were indicted with the offence of Aggravated Robbery c/s 285 and 286 (2) of *The Penal Code Act*. Before taking plea, the indictment was amended by striking off A4 (a juvenile offender) who was reported to have escaped from the remand home on 20th May, 2018 at around 20 4.00 pm. It was alleged that the three accused and one juvenile on 11th September, 2017 at Awere sub-county in Gulu District, stole one bale of second hand clothes, sim-sim paste, four plastic chairs, one flask, one iron box, 3 kgs. of meat, one lamp, 3 kgs of rice, four breakable plates, one litre of cooking oil, one packet of macroni, 2 kgs. of Irish potatoes, one packet of Royco, all valued at shs. 981,000/= from Adokorach Sharon, and immediately before, during or after the 25 said robbery, used deadly weapons, to wit; a panga and a knife. When the amended indictment was read out to the three accused and one juvenile, each of them pleaded guilty.

The learned State Attorney, Mr. Patrick Omia then narrated the following facts of the case; on 11th September, 2017 at around 5.00 am in Awere Village along Awere Road, Queens Parish 30 Laro Division, Gulu Municipality, the four accused and another still at large, while armed with knives and pangas, broke into a food kiosk of one Aparo Jennifer, and found one Adokorach

Sharon sleeping there. They threatened to kill her wife flashing a torch inside the kiosk. While one of them flashed the torch, the rest began removing items from the house which included one bale of second hand clothes, sim-sim paste, four plastic chairs, one flask, one iron box, 3 kgs of meat, one lamp, 3 kgs of rice, four breakable plates, one litre of cooking oil, one packet of macroni, 2 kgs of Irish potatoes, one packet of Royco. Adokorach made an alarm which attracted on Mama Becky who called a watchman attached to Flama Medical Centre. The accused fled. A case was reported to Gulu Central Police Station and on 13th September, 2017 at around 9.00 pm A1 Tabu Benson was arrested at the scene while he was trying to peep into the food kiosk again. Adokorach identified him because he was dressed the same way as he was on the day of the robbery. At the police station he revealed the identify of his accomplices and stated that they had refused to give him his share of the loot. He had gone back to get something for himself. The rest of the accused were arrested and charged. All the items stolen are valued at shs, 981,000/= and to-date none has been recovered. They were examined and found to be all adults except A3 Opio Richard who do-date is at a remand home.

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Upon ascertaining from each of the accused and juvenile offender that the facts as stated are correct, each of the accused was convicted on his own plea of guilty and the juvenile adjudged responsible for the offence of Aggravated Robbery c/s 285 and 286 (2) of *The Penal Code Act*.

20 Submitting in aggravation of sentence, the learned State Attorney stated that; the four offenders threatened to kill the victim who was sleeping in that house. they used deadly weapons. They are young boys on rampage. They are able bodied persons who decided to earn a living by robbery. None of the properties they stole has been recovered. They form part of the business capital of the complainants. Her business ventures are now in jeopardy. the offence in respect of A1, A2 and A5 is punishable with a maximum of death and under the sentencing guidelines the starting point is 35 years. In respect of A3 the maximum is detention for three years. They have all been on remand since 21st September, 2017. It is about ten months and twelve days. In the circumstances he prayed that A1, A2 and A5 are sentenced to 15 years from which the periods of remand should be deducted. A3 being juvenile, he proposed detention for two years and 8 months.

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In response, the learned defence counsel Ms. Alice Latigo prayed for a lenient custodial sentence on grounds that; all accused are remorseful and have owned up to the offence by pleading guilty. A1 at the time of arrest was 18 years old and was a carpenter as an assistant at a carpentry workshop. Both of his parents died; the father in 2004 and the mother 2014. A2 at the time of
5 arrest was 19 years old and a total orphan and does not remember when his parents died as he was young. He runs a child headed household in Layibi. A5 at the time of arrest was a primary five pupil at Child Care P.7 primary School in Kitgum Municipality at the age of 17 at the time. Now he is 18 years. He was brought to Gulu by a white man who was meeting his school fees. He would like to resume school. Whereas the guidelines provide for a starting point of 35 years,
10 that is upon conviction after a trial. They have pleaded guilty and deserve lenience. They are all below twenty years of age. they can still be rehabilitated. She proposed a maximum of seven years and that the ten months and a half be deducted so that they serve about six years imprisonment. A3 was in P.5 in Labworomo P.7 school in Bobi sub-county, Omoro District. He used to live with one of his aunties and he was a total orphan in 2013 and the aunt is a peasant.
15 He was brought to town by a friend. Two years and eight months is on a higher side. She prayed that under section 94 of *The Children Act* the period he has spent on remand should be considered a sufficient punishment. I pray that he is released. The items lost are ordinary.

In his *allocutus*, A1 Tabu Benson stated that this is his first time as an offender. He prayed for
20 lenience so that he can engage himself in productive activity. I will not repeat it again. A2 Rubangakene Christopher pleaded for forgiveness on ground that this is his first time. He pleaded for forgiveness from the complainant in absentia and stated that he left a young sister behind. A3 Opiyo Richard prayed for forgiveness stating that this is his first time and it was because of wrong peers. He was trying to look for school fees. He has his auntie, Ajok Susan,
25 who will support him. She lives in Labworomo village. He undertook never be involved in similar acts again. He requested court to release him so that he can help his aunt to raise money for fees. The four of them met at video halls in Layibi and A1 became their leader in committing this offence. On his part, A5 Ocaya Jacob prayed court to forgive him and give him a chance to apologise to the white man so that he can take him back to school. He is a one James of the
30 Church at Blue Mango, Gulu. He undertook never to repeat this act again. A4 the one who

escaped from the remand home took the entire loot. He used to sleep at the complainant's and he is the one who coordinated the robbery.

Contributing to the disposition hearing in respect of the juvenile A3 Opiyo Richard, Ms. Lamwaka Susan Christine, the Assistant Welfare and Probation Officer, Gulu attached to the remand home where the juvenile offender has been in custody while on remand stated that the juvenile offender is 16 years old. He is a vulnerable child who lost both parents. He was received at the remand home where he lived a quiet life. During counseling he opened up and told them that the death of his parents traumatised him since they died from HIV/ Aids. He grew up without love care and parenting. It is the reason he joined bad peers. He promises to change his life. It is a sign of remorse that he never dared to escape. He needs love and sending him to detention will not help. She recommends that he is conditionally discharged according to section 94 (1) (c) of *The Children Act* so that he can return to his aunt and to school.

According to section 286 (2) of the *Penal Code Act*, the maximum penalty for the offence of Aggravated Robbery is death. However, this punishment is by sentencing convention reserved for the most extreme circumstances of perpetration of such an offence such as where it has lethal or other extremely grave consequences. Examples of such circumstances relevant to this case are provided by Regulation 20 of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013* to include; the use and nature of weapon used, the degree of meticulous pre-meditation or planning, and the gratuitous degradation of the victim like multiple incidents of harm or injury or sexual abuse.

In *Ninsiima v. Uganda Crim. Appeal No. 180 of 2010*, the Court of appeal opined that 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. I have in that regard considered the decision in *Kusemererwa and Another v. Uganda, C.A. Criminal Appeal No. 83 of 2010*, where a sentence of 20 years' imprisonment was upheld in respect of convicts who had used guns during the commission of the offence, but had not hurt the victims. In *Naturinda Tamson v. Uganda C.A. Criminal Appeal No. 13 of 2011*, a sentence of 16 years imprisonment was imposed on a 29 year old convict for a similar offence.

In the instant case, I have considered the fact that deadly weapons were used. This was a grave aggravating factor. That notwithstanding, I have discounted the death sentence in respect of A1 Tabu Benson, A2 Rubangakene Christopher and A5 Ocaya Jacob, because the circumstances, although serious, are not in the category of the most extreme manner of perpetration of offences of this type. When imposing a custodial sentence upon a person convicted of the offence of Aggravated Robbery c/s 285 and 286 (2) of the *Penal Code Act*, the *Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013* stipulate under Item 4 of Part I (under Sentencing ranges - Sentencing range in capital offences) of the Third Schedule, that the starting point should be 35 years' imprisonment, which can then be increased on basis of the aggravating factors of reduced on account of the relevant mitigating factors. I have considered the key aggravating factor mentioned above which I find sufficiently grave to warrant a deterrent custodial sentence. It is for those reasons that I have considered a starting point of ten years' imprisonment.

However, that sentence is mitigated by the fact that the three of them pleaded guilty and by that fact are entitled to a discount for having pleaded guilty. The practice of taking guilty pleas into consideration is a long standing convention which now has a near statutory footing by virtue of regulation 21 (k) of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*. As a general principle (rather than a matter of law though) an offender who pleads guilty may expect some credit in the form of a discount in sentence. The requirement in the guidelines for considering a plea of guilty as a mitigating factor is a mere guide and does not confer a statutory right to a discount which, for all intents and purposes, remains a matter for the court's discretion. However, where a judge takes a plea of guilty into account, it is important that he or she says he or she has done so (see *R v. Fearon [1996] 2 Cr. App. R (S) 25 CA*). In this case therefore I have taken into account the fact that the three convicts pleaded guilty, as one of the factors mitigating their sentences and reduce the term to seven (7) years' imprisonment.

Furthermore, I have considered the fact that each of them is a first offender, they are all young adults below the age of twenty years, have expressed deep remorse for what they did and have a considerable capacity to reform. The severity of the sentence each one of them deserves has been tempered by those mitigating factors and is reduced from the period of seven years'

imprisonment, proposed after taking into account the aggravating factors, now to a term of imprisonment of four (4) years' imprisonment.

5 It is mandatory under Article 23 (8) of the *Constitution of the Republic of Uganda, 1995* to take into account the period spent on remand while sentencing a convict. Regulation 15 (2) of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*, is to the effect that the court should “deduct” the period spent on remand from the sentence considered appropriate, after all factors have been taken into account. This approach requires a mathematical deduction by way of set-off. From the earlier proposed term of seven years and
10 eight months' imprisonment, arrived at after consideration of the mitigating factors in favour of the convict, the convict having been charged on 21st September, 2017 and have been kept in custody since then, a period of ten months, I hereby take into account and set off the ten months as the period each of the three convicts have already spent on remand. I therefore sentence A1 Tabu Benson, A2 Rubangakene Christopher and A5 Ocaya Jacob, each to a term of three (3)
15 years and two (2) months' imprisonment to be served starting today.

As for A3 even though according to section 286 (2) of the *Penal Code Act*, the maximum penalty for the offence of Aggravated Robbery is death, section 104 (A) (1) of *The Children Act*, provides that a death sentence is not to be pronounced on or recorded against a person convicted
20 of an offence punishable by death, if it appears to the court that at the time when the offence was committed the convicted person was below the age of eighteen years. The alternative is provided for by section 94 (1) (g) of *The Children Act*, which states that in such instances the maximum period of detention is to be three years.

25 On account of children's diminished culpability and heightened capacity for reform, by statute children are different from adults for sentencing purposes. Sentencing a juvenile offender to three years in a children detention facility is the most severe criminal penalty available. Whereas the maximum punishment for a juvenile offender found responsible for an offence punishable by death is three years' detention, section 94 (1) (g) of *The Children Act* provides that detention
30 shall be a matter of last resort and shall only be made after careful consideration and after all

other reasonable alternatives have been tried and where the gravity of the offence warrants the order.

5 In arriving at an appropriate disposition order, the court will take into account the aggravating and mitigating factors relevant to the offence charged, the character of the offender, including but not limited to the facts and circumstances of the crime, the criminal history of the offender, the offender's level of family support, social history, the offender's record while on remand, the offender's ability to appreciate the risks and consequences of the conduct, the degree of criminal sophistication exhibited by the offender, the degree of responsibility the offender was capable of
10 exercising, the offender's chances of being rehabilitated, the physical, psychological and economic impact of the offense on the victim and the community, and such other factors as the court may deem relevant. Orders imposing the maximum period of detention should normally be reserved for the worst offenders and the worst cases.

15 Orders of that kind may be justified where the offence was committed with brutality, or where the prospects of the juvenile offender reforming through non-custodial interventions are negligible, or where the court assesses the risk posed by the juvenile offender and decides that he or she will probably re-offend and be a danger to the public for a considerable time to come. In such cases, maximum incapacitation is desirable. In cases of a grave nature but where the court
20 forms the opinion that they were only the consequence of unfortunate yet transient immaturity of youth, from that maximum point the sentence should be graduated and proportional to the offender and the gravity of the offence, with a view to strike a balance between the need for public safety and that of rehabilitating the juvenile offender. A distinction must be made between the juvenile offender whose crime reflects unfortunate yet transient immaturity of youth from the
25 rare juvenile offender whose crime reflects a deep-seated depravity. In the instant case, the juvenile offender participated in an armed robbery for which reason the gravity of the offence warrants an order of detention and I thus consider two (2) years and six (6) months' period of detention to be appropriate for this offender.

30 Against this, I have considered the fact that the juvenile offender pleaded guilty. The practice of taking guilty pleas into consideration is a long standing convention which now has a near

statutory footing by virtue of regulation 21 (k) of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*. I have taken this into account as one of the factors mitigating his sentence, hence reducing it by one third to one (1) year and eight (8) months.

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I have considered further the submissions made in mitigation of sentence and in his *allocutus* and thereby reduce the period to one years' detention. In accordance with section 94 (3) of *The Children Act*, to the effect that where a child has been remanded in custody prior to an order of detention being made in respect of the child, the period spent on remand shall be taken into
10 consideration when making the order, I note that the convict has been in custody since 21st September, 2017. I hereby take into account and set off ten months as the period the juvenile offender has already spent on remand reducing the period further to ten (10) months.

Having taken into account that period, I consider that a detention order of four months of what
15 would otherwise be left of the period of detention will not serve any additional useful purpose. Instead in accordance with section 94 (1) (f) of *The Children Act*, I impose an order of probation of ten (10) months starting today. He is placed under the supervision of the District probation officer and the Family and Children's Court having jurisdiction in the district or area for the time being in which the juvenile offender resides or will reside. In addition, in accordance with
20 section 94 (1) (d) of *The Children Act*, I impose an order binding the juvenile offender over to be of good behaviour for a period of six (6) months starting today.

It is mandatory under section 286 (4) of *The Penal Code Act*, where a person is convicted of Aggravated Robbery c/s 285 and 286 (2), unless the offender is sentenced to death, for the court
25 to order the person convicted to pay such sum by way of compensation to any person to the prejudice of whom the robbery was committed, as in the opinion of the court is just having regard to the injury or loss suffered by such person. The three convicts A1 Tabu Benson, A2 Rubangakene Christopher and A5 Ocaya Jacob admitted having robbed the victim of property valued at Shs. 981,000/=. Each of the three convicts is to compensate the victim Adokorach
30 Sharon in the sum Shs. 100,000/= hence a total of Shs. 300,000/= in addition to serving the custodial sentence.

Having been convicted on their respective pleas of guilty, each of the three convicts is advised that he has a right of appeal against the severity and legality of the sentence, within a period of fourteen days. Having been adjudged responsible and the disposition order made on basis of his own plea of guilty, the juvenile offender too is advised that he has a right of appeal against the
5 legality and severity of that orders, within a period of fourteen days

Dated at Gulu this 8th day of August, 2018.

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Stephen Mubiru
Judge.
8th August, 2018.

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