

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
CRIMINAL CASE No. 0028 OF 2017

5 **UGANDA** **PROSECUTOR**

VERSUS

10 **BUATRE MATAYO**..... **ACCUSED**

Before: Hon Justice Stephen Mubiru.

SENTENCE AND REASONS FOR SENTENCE

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When this case came up on 10th January, 2018 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 the accused and others still at large, on 14th January, 2016 at Ombaci village in Arua District, robbed two cows, one table, two chairs and other assorted items
20 the property of a one Acidri Tom and immediately before, during or after the robbery threatened to use a deadly weapon, to wit a panga on the said Acidri Tom.

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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
25 invited the State Attorney to introduce the plea agreement and obtained confirmation of this fact from defence counsel on state brief, Mr. Ronal Onencan. 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 the constitutional rights specified in the first section of the plea
30 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 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; the complainant is the son in law to the accused. On 12th January, 2016 he had a misunderstanding with his wife, the daughter of the accused and she returned to the home of the accused. This did not go well with the accused. He organised his
5 relatives with pangas, bows and arrows and attacked the complainant, beat him and took two of his cows, a table, chair and some other house hold items. The complainant was taken to Arua Hospital and he reported the matter to Arua Police Station. The accused was traced and arrested. The two cows recovered and handed over to the complainant after the photos being taken. The accused and the complainant were examined and the accused was found to be 45 and of normal
10 mental status. The examination was done on 20th January, 2016. The victim was examined and found with a cut wound on the head, bruises on the right arm and he was of the apparent age of 41. He was examined on 25th January, 2016. Police form 24A in respect of the accused together with photographs of the items recovered, were tendered as part of the facts.

15 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 three (3) years' imprisonment proposed in the plea agreement, the learned State Attorney adopted the aggravating factors outlined in the plea agreement which are that; - the complainant was deprived of his property, beaten by the accused
20 who took the law into his hands and sustained serious injuries. The learned defence counsel adopted the mitigating factors outlined in the plea agreement which are that; - the accused is aged 47 years and is a first offender, his wife died leaving behind a four months old baby, he is remorseful, he has a weak mother who needs support and all the property was recovered. In his *allocutus*, the accused did not wish to add to the mitigating factors. The complainant was not
25 available in court to make his victim impact statement.

I have reviewed the proposed sentence of three years' imprisonment in light of *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
30 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 one year on remand, (having been charged and remanded on 21th January, 2016), I have formed the opinion that the proposed sentence is harsh considering the circumstances of the case. The accused was driven by anger after the complainant had assaulted his daughter. He went out motivated to retaliate and humiliate the complainant rather than out of greed for property. It was more of a reprisal attack on the complainant for which he is clearly very remorseful. I thus reject the plea agreement and instead sentence the accused to a term of imprisonment of one (1) year and six (6) months' imprisonment, to be served starting today.

Section 286 (4) of the *Penal Code Act*, enjoins the court to make an order of compensation but since all the property was recovered and the court has not been furnished with evidence regarding the extent of injury sustained by the complainant, no order is made.

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 10th day of January, 2018

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Stephen Mubiru
Judge,
10th January, 2018.