

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

(CRIMINAL DIVISION)

HCT-00-CR-CN-0038-2020

(ARISING FROM WAKISO COURT, CRIMINAL CASE NO. 355/2019)

SENYIMBA TONNY APPELLANT

VERSUS

UGANDA RESPONDENT

BEFORE: HON. MR. JUSTICE J. W. KWESIGA

JUDGMENT:

This is an appeal against sentence given by Her Worship Karungi Doreen Olga, Grade One Magistrate at Wakiso on 3rd July 2019. The Appellant and another on 28th June 2019 were charged with attempted Robbery Contrary to Section 287(1)(2)(a) of the Penal Code Act. Each of the accused persons pleaded not guilty and the trial Magistrate sentenced each convict to (5) five years imprisonment.

There are two grounds of Appeal filed for Ssenyimba Tonny by M/s. Ngobi Ndiko Advocates:-

1. That the Learned trial Magistrate erred in Law and fact when she sentenced the Appellant to (5), five years imprisonment, which was harsh and excessive, without taking into account the mitigating factors when determining the sentence thereby occasioning a miscarriage of justice to the Appellant.

2. That the Learned trial Magistrate erred both in Law and fact when she only took into account the aggravating factors and dis-regarded the mitigating factors thereby harshly and excessively sentencing the Appellant thus occasioning injustice to the Appellant.

Both Counsel for the Appellant M/s. Ngobi Ndiko Advocates and for the Respondent, The Director of Public Prosecution, Miss Sheron Sarah Nambuya, Senior State Attorney filed written submissions in support of their respective cases.

It is settled that the duty of this court as the first Appellate court is to evaluate afresh the evidence on record, apply the relevant Law and arrive at it's appropriate decision. See Leading decision in:-

- (1) Kifamunte Henry Versus Uganda – Criminal Appeal No. 10 of 1997 (SCU).
- (2) Pandya Versus R. (1957) E.A 336.
- (3) J. Mulita Versus S. Katama – Civil Appeal No. 11 of 1999 (SCU).

The starting point is the sentence prescribed by the Law under which the Appellant was convicted which should be considered with all factors and circumstances presented in this particular case. In sentencing on appeal, the court may confirm, vary or reverse the sentence since this appeal is against sentence alone. Refer to Section 34 of Criminal Procedure Code Act. The powers of this court are stated in Section 34(2) (c) which allows this first Appellate court to alter or uphold the sentences.

An Appellate court will only alter a sentence imposed by the trial court if it is evident it acted on a wrong principal or overlooked some material factor or if the sentence is manifestly excessive in

view of the circumstances of the case. Reference has been made to the judgment of the Supreme Court in Livingstone Kakooza Versus Uganda – Criminal Appeal No. 17 of 1993 (SCU).

In **James Versus R. (1950) EACA 147** it was settled that an appellate court will not ordinarily interfere with the discretion exercised by a trial Judge, unless it is evident that the Judge has acted upon some wrong principle or overlooked some material factor or that the sentence is harsh and manifestly excessive in view of the circumstances of the case.

I have examined the instant case in light of the above settled principals of Law. It is evident that the Appellant readily pleaded guilty to the offence of attempted Robbery which attracted a maximum sentence of 7 years imprisonment. He was sentenced to 5 years imprisonment.

The complaint on appeal is that the trial Magistrate sentenced him harshly and excessively. My view is that she sentenced the convict to well below the maximum sentence. She discounted the maximum stance by two (2) years therefore, this was not harsh or excessive.

I have considered the manner in which the offence was committed as stated and accepted by the convict, the culprits used a rope to strangle the victim. The trial Magistrate stated:- ***“Having considered all the above factors especially the fact that the offence committed is a felony and on lighter note, the convicts pleading guilty, I do sentence each convict to a (5), five years imprisonment.***

----- more reasons for sentence.

- 1. The offences of this nature are on the rise countrywide.***
- 2. As custodians of justice we condemn them in the stronger terms.***
- 3. To deter others from committing similar offence”.***

I have considered the fact that all that the accused persons asked court was leniency. She was lenient when she discounted the maximum sentence of 7 years imprisonment to 5 years imprisonment. She considered the mitigating factor, namely that the convicts readily pleaded guilty to the offence.

My understanding is that the convicts saved court from tedious and expensive trial which earned them a reduction to five, (5) years imprisonment. I am satisfied that the learned trial Magistrate followed correct principals of sentencing and gave reasons to justify her discretion in the sentencing. The accused were charged on 28th June 2019 and pleaded guilty instantly sentencing proceedings took place on 3rd July 2019. The trial Magistrate respected the convict's right to a speedy and fair trial and I have not found any justification to interfere with her decision.

Finally I wish to comment that whereas the constitution (sentencing Guidelines for courts of Judicature (practice directions) of 2013 provide the sentencing range for Attempted Robbery to be 9 months up to 7 years imprisonment. In the circumstances of this case and considering reasons given by the Magistrate, five (5) years imprisonment was not manifestly harsh or too low to deserve alteration in the interest of justice of this particular case.

In view of the above, I have not found any merits in this appeal as a whole. It is hereby dismissed and the sentence of (5) five years imprisonment for the Appellant with effect from the 3rd day of July 2019 is hereby upheld/confirmed.

Dated at Kampala this 5th day of **January 2021**.

J. W. Kwesiga

Judge

5/1/2021

Direction:-

Given the practice of discouraging avoidable physical gathering of Litigants to reduce risks of spread of Covid-19, typed copies of this judgment be served and deemed delivered to:-

1. Ms. Ngobi, Ndiko Advocates for the Appellant.
2. The Director of Public Prosecutions, Kampala

J. W. Kwesiga

Judge

5/1/2021