Delivered on
12th October 2023

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

Coram: Mwondha, Tibatemwa-Ekirikubinza, Tuhaise, Chibita, Musota, JJ. SC

CRIMINAL APPEAL NO. 12 OF 2018

1. MWESIGE ADOLF
2. AUSI OBEDI
3. MUHENDA KABULETA BENEZAR

:: APELLANTS

VERSUS

UGANDA:: RESPONDENT

(Appeal against the judgment and decision of the Court of Appeal at Kampala in Criminal Appeal No. 76 of 2014 before; Kakuru, Egonda-Ntende, Musoke, JJA dated 20th March 2018)

JUDGMENT OF THE COURT

This is a second appeal lodged by the appellants, aggrieved and dissatisfied with the decision of the Court of Appeal. There were four grounds of appeal as embodied in the Memorandum of Appeal as follows: -

1. The Learned Justices of the Court of Appeal erred in law when they relied on weak and unreliable DNA evidence to confirm the conviction of the offence of murder and Aggravated robbery leading to a miscarriage of justice.
2. The Learned Justices of the Court of Appeal erred in law when they found that the 2nd Appellant had been properly identified at the scene of crime here by wrongly confirming his conviction of the offence of murder and aggravated robbery.
3. The Learned Justices of the Court of Appeal erred in law when they held that the 3rd Appellant participated in the commission of the offences of murder and aggravated robbery thereby wrongly confirming his conviction.
4. The Learned Justices of the Court of Appeal erred in law when they confirmed the appellants' conviction based on weak and unreliable circumstances which did not irresistibly point to the guilt of the appellants.

In the alternative but without prejudice

5. The Learned Justices of the Court of Appeal erred in law when they sentenced the appellants to sentences which were based on wrong legal principles and did not consider mitigating factors of the appellants.

We have to mention at this point that the Coram above was as a result of reconstitution. The reason being that after hearing the appeal but before delivery of the judgment, two Justices could not sit as one was ill and another was called by the Lord. May his soul rest in peace. It was necessary to rehear the appeal to facilitate delivery of the judgment.

Background.

The three appellants were indicted with two charges, (1) murder C/S 188 and 189 of the Penal Code Act and (2) Aggravated Robbery C/S 285 and 286 of the Penal Code Act. They were tried in the High Court where they pleaded not guilty to the two Counts as charged. All the three appellants were convicted and sentenced to 50 years' imprisonment each on count 1. A1 and A2 were sentenced to 27 years' imprisonment each, while A3 was sentenced to 36 years' imprisonment on count 2 to run consecutively.

It was alleged by prosecution that the three appellants and others still at large, at Katooza Village in the Kyenjojo District murdered one Asa Rogers on Count 1. And on the 2nd Count it was alleged that the appellants and others still at large at Katooza village above stated robbed Asa Rogers of his motorcycle and during the said robbery possessed a deadly weapon, to wit, a panga.

They were dissatisfied with the High Court decision and appealed to the Court of Appeal against both conviction and sentence.

The Court of Appeal partially allowed the appeal against sentence and resentenced A1, A2 and A3 to 20 years' imprisonment on Count 1 of murder C/S 188 and 189 of the Penal Code Act. The Court of Appeal also resentenced A1, A2 and A3 to 18 years' imprisonment on Count 2 of Aggravated Robbery C/S 285 and 286 of the Penal Code Act.

The appellants were dissatisfied with the decision of the Court of Appeal hence this Appeal.

Representation.

At the hearing, the appellants were represented by Mr. Sebugwawo Andrew on state brief and the respondent was represented by Ainebyona Happiness, Chief State Attorney, of DPPs Office who was holding brief for Nabasa Caroline.

Submissions;

Both Counsel had earlier filed written submissions, which they maintained at the rehearing of the appeal.

Ground 1

Counsel for the appellant contended that the learned Justices of the Court of Appeal erred in law when they relied on the weak and unreliable DNA evidence to confirm the conviction of the appellants of the offence of murder and aggravated robbery which led to a miscarriage of justice. Counsel submitted that according to the judgment of the Court of Appeal at page 12, Court stated that, it found no evidence that there was a break in the chain of exhibits or that they had been irregularly handled, an attempt could have been made to wash off the blood and further that the blood on the jumper could have been contaminated but it was the blood of the deceased that was found on the 1st appellant's clothes. Counsel submitted that the Court of Appeal failed in its duty to effectively re-appraise the evidence and hence arriving at a wrong conclusion. The wrong conclusion being that A1 testified that the trouser was his but that the jumper belonged to Rwamwenge Ngoyi whom they were staying with. That the same jumper was not under his bed, *inter alia.*

Counsel further submitted that the Court of Appeal wrongly stated that the evidence linked A1 to the crime without there being very serious laboratory tests. That therefore the Court of Appeal did not re-evaluate the evidence. Counsel submitted that both High Court and Court of Appeal acknowledged the moderate genetical evidence for the proposition that exhibit A6 was the potential contributor of exhibit A3 but failed to link it to A1 in the moderate genetical evidence meant that it was not scientifically proved that it matched with exhibit A3. Counsel submitted in the alternative that even though the same would have matched, the 1st appellant testified that the trouser was not his but his brother's, whose names he gave but prosecution gave a deaf ear. He also pointed at the locks to the house which had been already broken, which ordinarily gave room for fabrication of any kind of evidence as it was, with blood samples on the jumper.

In conclusion, counsel submitted that the learned Justices relied on weak and unreliable DNA and failed to re-appraise the evidence, which resulted into wrongly confirming the conviction on the offences of murder C/S 188 & 189 and Aggravated Robbery C/S 285 & 286 of the Penal Code Act.

Ground 2

The complaint was that, the learned Justices of the Court of Appeal erred in law when they found that the 2nd appellant was properly identified at the scene of crime, thereby wrongly confirming his conviction of the two offences.

Counsel submitted that, the evidence that was given by PW6 and PW9 was fabricated. That the 2nd appellant stated that he was home and he never saw PW6 that night. That according

to the record of proceedings of the High Court at Page 17, PW6 told Court that he saw the 2nd appellant in front of him and that he was his friend. That he even did not greet him at all, but PW6 never reported his alleged attack to police. The record showed that the High Court said, that the evidence was made voluntarily while in Police Cells to the witness as a fellow prisoner. The High Court recorded that much as it was of little evidential value it was relevant and useful in corroboration of other pieces of evidence. Further the High Court recorded that the 2nd appellant did not deny talking to PW6 in the Police Cells at Kyenjojo. He only denied having made a confession to a fellow prisoner or anybody else.

Counsel submitted that the Court of Appeal stated that the testimony of PW6 was corroborated by PW9 and PW6 but gave no rationale on how PW5 evidence corroborated. He further submitted that the Court of Appeal stated that the evidence against appellant 3 was corroborated by PW9 and PW7 but it never gave any explanation for the conclusion. Counsel contended that in line with section 23 of the Evidence Act, Cap. 6, the 2nd appellant had to make a confession before a Police Officer of or above the rank of Assistant Inspector or a Magistrate as opposed to PW9. That according to the record A1 denied making the alleged confession and the High Court never conducted a trial within a trial to prove the truthfulness of the confession. Counsel therefore submitted that the fabricated evidence could not corroborate that of PW9.

Ground 3

Counsel submitted that the Court of Appeal Justices erred in holding that the 3rd appellant participated in the murder and aggravated robbery as alleged by the prosecution.

Counsel submitted that the Court of Appeal only stated the evidence of PW5 against the 3rd appellant which was corroborated by that of PW9 and not PW7. Counsel submitted further that the evidence of PW7 that he was told by the 3rd appellant how he tracked the deceased with Nyakahuma Godfrey was hearsay and could not qualify to be a confession. Counsel submitted that it was therefore wrong for the Court of Appeal Justices to rely on it.

Ground 4

Counsel submitted that the learned Justices of the Court of Appeal erred in law, when they relied on weak and unreliable circumstantial evidence which did not **irresistibly** point to the guilt of the appellants. Counsel cited the case of **Simon Musoke V R [1958] EA 715** it was held **"where a case depends on wholly or partially on circumstantial evidence the Court must find before deciding to convict that the inculpatory facts are incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of guilt. Circumstantial evidence must**

always be narrowly examined and it is necessary before drawing an inference of the accused's guilt from such evidence to be sure that there are no other existing circumstances which would weaken or destroy the inference."

Counsel submitted that the DNA evidence was not conclusive due to the various interpretations it received. Counsel pointed out: -

(a) The fact that a combination match index showed moderate genetical evidence for the proposition that exhibit A6 is the potential contributor of EX A3 (PW8) (Godfrey Onen) testified that "A mixture analysis shows a combination or other DNA there, and we could not recover much, the signal of the machine failed to pick that.

(b) The fact that the jumper belonged to the 1st appellant as the 1st appellant had testified that the jumper did not belong to him but for the brother and that the same was not found under his bed, and that this evidence had to be exhaustively re-evaluated which was not the case.

Ground 5

This was submitted upon in the alternative and without prejudice.

The complaint was that the learned Justices of the Court of Appeal erred in law to have sentenced the appellants to sentences which were based on wrong legal principles and did not consider mitigating factors for the appellants.

Counsel submitted that, though he mitigated and stated that the convicts were first offenders who can be easily rehabilitated and considering the period spent on remand, the learned Justices of the Court of Appeal re-evaluated and considered only their being young, and the period they stayed on remand. They did not consider that they can easily be rehabilitated and serve this country in other useful capacities.

Counsel prayed that this appeal succeeds, or in the alternative, this Court sets aside the sentences imposed by the Court of Appeal, takes into account all the mitigating factors and reduces the appellants' sentences to 15 years on count 1 of murder C/S 188 and 189 of the Penal Code Act, and 15 years' imprisonment on the aggravated robbery C/S 285 and 286 of the Penal Code Act.

Respondent's submissions.

Ground 1

Counsel submitted that PW1 AIP Wamala Tumwanye at page 10 of the High Court record of proceedings testified that the jumper was recovered from the appellant's bed in the

appellant's house. That this evidence was not challenged in cross-examination regarding the ownership of the jumper.

Counsel submitted that the Court of Appeal fully executed its duty to analyse the evidence and quoted page 25 of the record of Appeal as follows: -

"Mr. Godfrey Onen a Government Laboratory Analyst testified that he nalysed the blood samples by the Police. The blood on the first appellant's trouser matched that of PW5's girlfriend. The jumper had a combined index and showed contamination or other DNA. The combined match showed moderate genetical evidence for the proposition that the deceased was the potential contributor. In cross-examination he explained "the moderate is conclusive without error". Counsel further submitted that the testimony of PW8 corroborated the testimony of PW2 which enabled the Court of Appeal to come to the correct conclusion and it did not err in law when it relied on the evidence of DNA to confirm the conviction. It considered DNA evidence together with other circumstantial evidence on record.

Ground 2

Counsel submitted that the conviction of the 2nd appellant was correctly confirmed by the Court of Appeal. That PW6 one Kaija Joseph testified that on the 10/02/2011 when he was coming from Kyenjojo town at 9:30pm, he saw a motorcycle with headlights on. That he recognized the 2nd appellant. That a group of about 4 to 5 people jumped from the bush and tried to attack him, and it was the 2nd appellant who said, this is not the one, this is a fellow boda boda. That he was beaten but left to go. Counsel further submitted that next day he received information that Asa Rogers (deceased) was murdered at the very spot the same night. That there was definitely no other explanation apart from the participation of the 2nd appellant in the murder of the deceased. The words of the 2nd appellant showed that they were indeed waiting for their target who happened to be the deceased. There is overwhelming circumstantial evidence regarding the participation of the 2nd appellant in the murder of the deceased since he was murdered at the very location PW6 was attacked from the same night and has been correctly identified.

Counsel submitted that the Court of Appeal on pages 26 and 27, the learned Justices re-evaluated the evidence as a whole not in isolation of circumstantial evidence and established that the 2nd appellant was positively identified by PW6 whose testimony was believable and was corroborated by that of PW9 and PW7 and rightly concluded that the evidence adduced though circumstantial was incapable of any other explanation than that of guilt of the 2nd appellant.

Ground 3

The complaint was that the learned Justices of the Court of Appeal erred in law to hold that the 3rd appellant participated in the commission of the offences of murder and aggravated robbery which resulted in the wrong confirmation of his conviction.

Counsel submitted that PW3 No. 42718 Corporal PL Wako Patrick testified that he participated in the arrest of the 3rd appellant who at the time was hiding in Kisenyi Kampala. That as they were going to Kyenjojo the appellant revealed to him that he participated in the murder of Asa Rogers (deceased). The learned Justices, relied on the evidence of PW5, PW9 and PW7 to uphold the conviction of the 3rd appellant.

Counsel further submitted that PW9 (Mugume Ismail) who was in police custody with the 3rd appellant testified at page 23 of the High Court record of proceedings that the 3rd appellant confided in him and revealed that he had participated in the murder of the deceased. Counsel submitted that this evidence was not challenged even in cross-examination.

Counsel submitted that at page 19 of the High Court record of proceedings, the 3rd appellant revealed to PW7 (Karamagi Bright) that he had trailed the deceased together with the 2nd appellant, the chief master planner of the crime. That the 1st appellant, together with others murdered the deceased, Rogers. Counsel submitted that when the 3rd appellant told PW9 and PW7 it was being done independently and separately.

Counsel submitted that the learned Justices at page 27 of the Court of Appeal record of proceedings said among others, that they found that evidence adduced against the thee appellants although circumstantial was incapable of any other explanation except the guilt of the appellants.

Ground 4

The complaint was that the learned Justices of the Court of Appeal erred in law to confirm the appellants' conviction based on weak unreliable circumstantial evidence which did not irresistibly point to the guilt of the appellants.

Counsel submitted that the learned Justices of the Court of Appeal re-evaluated the evidence and found that the circumstantial evidence irresistibly pointed to the guilt of the appellants. Counsel relied on Byaruhanga Fodoni Vs. Uganda, Supreme Court Criminal Appeal No. 18 of 2002 (unreported).

Counsel submitted that the learned Justices of the Court of Appeal considered the direct evidence and the circumstantial evidence on record as a whole not in isolation to confirm the convictions as testified by PW2, PW3, PW5, PW6, PW7, PW8 and PW9.

Ground 5

The complaint was that the learned Justices erred in law when they sentenced the appellants to sentences based on wrong legal principles without considering mitigating factors.

Counsel submitted that section 5 of the Judicature Act provides that the Appeal has to be on a matter of law only. And section 5(3) of the Judicature Act provides that **the accused person may appeal to the Supreme Court against sentence or order on a matter of law not including severity of the sentence**. Counsel submitted that the sentences imposed by the Court of Appeal are legal. And the learned Justices considered mitigating factors as showed in the judgment. Counsel submitted that the omission in the judgment to mention the words rehabilitation and resourcefulness of the appellants did not render the sentences illegal.

Counsel submitted that the appeal lacked merit and prayed that this court upholds the conviction and sentence and dismiss the appeal.

Consideration of the appeal

This is a second appeal against the Court of Appeal decision of conviction and sentence of the appellants. The duty of the second appellate Court is to find out whether the first appellate Court in approaching its task applied or failed to execute its duty. The duty of the first appellate Court is to reconsider and re-evaluate the evidence presented before the trial Court and the materials there to. The 1st appellate Court must then make up its mind not disregarding the judgment appealed from but carefully weighing and considering it. (See **Pandya Vs. R [1957] EA, Tito Buhungiro Vs. Uganda, SCCA No. 8 of 2018, Kifamunte Henry Vs. Uganda, SCCA No. 10 of 1997**) that "it's only in exceptional circumstances, where the second appellate Court may have to interfere with the findings of the lower Courts on record, when it is proved that the lower Courts were manifestly wrong on the finding of fact in order to oblige this Court to re-evaluate to ensure that justice is properly timely done."

We carefully studied the Court record, considered the submissions of both Counsel and the authorities relied on.

It is a fact that this case depended mostly on circumstantial evidence as there was only one direct or eye witnesses' in the identification of the 2nd appellant at the scene of crime. The principles to be followed when determining this kind of case were settled in the Court of

Appeal for East Africa and other common wealth jurisdictions. In **Musoke V R [1958] EA 715** it was held "...the inculpatory facts must be incapable of explanation with the innocence of the accused person upon any other reasonable hypothesis than that of guilt (see **Teper V R [1952] 2 All ER 44).**

We are alive to Rule 30 of this Court Rules which provides: -

Where the Court of Appeal has reversed, confirmed or varied a decision of the High Court acting in its original jurisdiction, the Court may decide matters of law or mixed law and fact, but shall not have discretion to take additional evidence.

We shall bear in mind those principles to determine this appeal.

The three appellants were indicted on two charges. (1) murder C/S 188 and 189 of the Penal Code Act and on count (2) of Aggravated Robbery C/S 285 and 286 of the Penal Code Act.

They were convicted by the High Court trial Judge. The conviction was confirmed for all the three appellants and on the two counts, by the Court of Appeal. The sentences were varied by the Court of Appeal for failure to apply the principle in **Rwabugande Moses V Uganda, SCCA No. 25 of 2014** of deducting mathematically the period spent on remand.

We carefully studied the Court of Appeal record which included the record of proceedings from the trial Court and both judgments. After careful study of the same we found the following: -

Ground 1

The complaint was that the learned Justices of the Court of Appeal erred in law to rely on weak DNA evidence to confirm the conviction of the appellants which caused a miscarriage of justice.

The record of the Court of Appeal showed clearly that after re-evaluation of the evidence part of which has been reproduced in this judgment found that the DNA evidence of the jumper, linked the 1st appellant to the crime and there was no evidence breaking the chain of exhibits or that they had been irregularly handled. The jumper was not found at the scene of crime and therefore there was a possibility of mix up with the deceased blood. That an attempt could have been made to wash off the blood. PW8 the Government DNA analyst stated that a mixed index analysis showed a combination of other DNA but it was the deceased's blood that was found on 1st appellant's clothes. The 1st appellant was seen by PW5, the girlfriend of the 3rd appellant and both the 1st appellant and the 3rd appellant were riding a motorcycle with no head lamps. The motorcycle was black with red parts and had no number plate. The motorcycle had been hidden behind PW5's house. Upon re-

evaluation of the evidence of PW6 it revealed that the people who attacked him immediately before the deceased was killed at the same place had a panga and had cut off his motorcycle head lamps. PW6 testified that he had recognized the 2nd appellant. At page 8-28, the Justices of the Court of Appeal re-evaluated the trial Court record of proceedings, which showed that the evidence was considered as a whole not in isolation regarding all the evidence against all the appellants. The evidence of PW1 who arrived early at the scene of crime found the deceased's body in a pool of blood with deep cut wounds on his head and back. There was a panga at the scene of crime, a motorcycle helmet, a pair of pants, riding gloves and a bag containing various items. These items were exhibited and an exhibit slip was tendered in Court. The following day the 1st appellant was arrested by PW2 a police officer following a tip off. The 1st appellant led PW2 to the house of the 2nd appellant where a pair of trousers brown in colour was recovered together with a green jumper under his bed. Both had blood stains. The 1st appellant's explanation was that the blood was for his girlfriend who he had sex with when she was in her menstrual period.

PW8 obtained blood samples from the 1st appellant, the deceased's father and PW5 the girlfriend named by the 1st appellant. The samples were marked and taken to the laboratory analyst and an exhibit slip was presented and tendered in Court. PW8 the Government analyst analysed the blood samples obtained by police. The analyst stated that the blood on the jumper had combined index and showed contamination or other DNA. That the combined match index showed moderate genetical evidence for the proposition that the deceased was the potential contributor.

From the foregoing, we were satisfied that the DNA evidence was not weak because it was not being considered in isolation of the irresistible circumstantial evidence that pointed to the guilt of the appellants. (See **Musoke Simon V R** (supra). This ground fails.

Ground 2

The complaint was that the learned Justices of the Court of Appeal erred in law when they found that the 2nd appellant had been properly identified at the scene of crime resulting in wrongly confirming his conviction on murder and aggravated robbery thereby causing a miscarriage of justice.

The learned Justices of the Court of Appeal reproduced what PW2 testified at the trial, as they re-evaluated the evidence and stated that the 3rd appellant maintained that it was the 1st and 2nd appellants who murdered the deceased. The learned Justices reproduced PW6 testimony when he stated that he recognized the 2nd appellant. The learned Justices produced what PW9 stated when he reported at police and he gave a detailed account of

how the 2nd appellant Ausi Obedi revealed to him how he and others had killed the deceased because he had recognized them. He also named the 1st and 3rd appellants.

This is a case which depended on partly circumstantial evidence. But for identification of the 2nd appellant, there was some direct evidence since the witness PW6 knew A2 as he testified and there was light from his motorcycle which these assailants cut off after he had recognized him and heard him say that, he was not the target and they beat him but left him to go.

There are principles laid down as to establish proper and correct identification like: -

i. If the witness knew the accused
ii. The distance from which the witness was observing the accused
iii. The time taken
iv. The source of light available.

(See **Kidega Joseph & Okot Justino, SCCA No. 07 of 2019.** This relied on **Beingana Kanoni Willy v Uganda SCCA No. 20 of 2009** (unreported) which referred to **Abdalla Bin Wendo v R [1953] EACA 166** laid down the conditions to be considered for favorable and correct identification in **Bogere Moses v Uganda SCCA No. 1 of 1997** this cited the case of **Kasana v Uganda AC No. 12 of 1981** with approval, where it was held, inter alia, that there is need to look for other supporting evidence if the conditions favouring identification are difficult.

We are satisfied that the light that came from PW6's motorcycle before the head lamps were cut off was sufficient. And even the fact that PW6 knew the appellants and he also identified one of the appellants, A2 by his voice. This evidence considered together with the rest of the circumstantial evidence as reproduced by the learned Justices of the Court of Appeal as per the record, we were satisfied that there was no mistaken identity and therefore the 2nd appellant was properly identified at the scene of crime.

Ground 3

The complaint was that the learned Justices of the Court of Appeal wrongly confirmed the 3rd appellant's participation in the commission of the offences of murder and aggravated robbery.

From that re-evaluation of the evidence on record, the Court of Appeal came up with their own independent conclusion that PW9 testimony tallied with the rest of the circumstantial evidence linking the 1st, 2nd, and 3rd appellants to the commission of the crime. And that there was no way PW9 who was completely unrelated to the appellants or the deceased could have known such detail.

We are satisfied that the learned Justices after re-evaluation and re-consideration of the evidence on record rightly confirmed the conviction of the 3rd appellant. This ground fails.

Ground 4

The complaint was that the learned Justices of the Court of Appeal erred in law when they confirmed the appellants' conviction in the absence of strong irresistible circumstantial evidence pointing to the guilt of the appellants.

We are satisfied from what we have already stated above that the learned Justices did not err in law or at all to confirm the conviction of the appellants. This ground also fails.

Ground 5

The complaint was that the sentences imposed on each of the appellants were based on wrong principles, without considering mitigating factors. That the learned Justices of the Court of Appeal only considered the appellants being young and the period they spent on remand. That the appellants being easily rehabilitated and being useful in this country by serving in different capacities was not considered.

Section 5 of the Judicature Act, provides that **"in the case of an appeal against a sentence and an order other than one fixed by law the accused person, may appeal to the Supreme Court against the sentence or order, on a matter of law not including the severity of the sentence."**

Obviously, the appellants were complaining of severity of sentence in the guise of failure by Court to consider mitigating factors. Be that as it may, it was clear to us according to the judgment of the Court of Appeal, that the learned Justices misapplied the decision in the **Rwabugande Moses case SCCA No 25 of 2014**. This is because the **Rwabugande Moses** case was decided on 3rd March 2017, while the decision of the High Court was made on 6th December 2016.

This Court in **Abelle Asuman Vs. Uganda, SCCA No. 60 of 2016** *inter alia,* held, "After the Rwabugande case decision this Court and the Courts below have to follow the position of the law as stated therein. This is in accordance with the principle of precedent. We cite Black's Law Dictionary 18th Edn 1214 *A law of precedent is an adjudged case or decision of Court of justice, considered as furnishing a rule or authority for the determination of an identical or similar case afterwards arising or of a similar question of law.*

It was further stated by this Court that a precedent has to be in existence for it to be followed. In the **Abelle Asuman** case (supra) the Court of Appeal decision was on 20th December 2016. The Court of Appeal could not be bound to follow a decision of the

Supreme Court of 3rd march 2017 about four months after the decision. This Court said, "**Rwabugande Moses** case (supra) would not bind Courts for cases decided before 3rd March 2017.

We find it useful to point out that in the **Rwabugande Moses** case (supra), this Court made it clear that it was departing from its earlier decisions in, **Kizito Semakula V Uganda, SCCA No. 24 of 2001, Kabuye Senvewo V Uganda, SCCA No. 2 of 2002, Katende Ahamad V Uganda, SCCA No. 6 of 2004** and **Bekenya Jeseph V Uganda, SCCA No. 17 of 2010** which held that, "taking into account in consideration of the time spent on remand does not necessitate a sentencing Court to apply a mathematical formula."

Before the decision of **Rwabugande Moses** (supra) this Court and the Courts below were following the law at it was in the previous decisions above quoted since that was the law then.

In the **Rwabugande Moses** case (supra) this Court held, "that taking into account of the period spent on remand by a Court is necessarily arithmetical. This is because the period is known with certainty and precision, consideration of remand period should therefore necessarily mean reducing or subtracting that period from the final sentence.

We carefully perused the record of Appeal and found that the trial Judge/ Court, considered all the circumstances of the case and considered the period each appellant spent on remand before imposing the sentence which was in accordance with the law then.

It follows therefore that the Court of Appeal faulting the trial Court was an error in law since the decision was before the decision in **Rwabugande** case (supra)

In accordance with rule 31 of this Court Rules we re-instate the sentence the trial Court imposed with variation in the following terms after taking into account the circumstances of the case as the trial Court did.

Count 1; A1 is sentenced to 30 years' imprisonment.

A2 is sentenced to 30 years' imprisonment.

A3 is sentenced to 30 years' imprisonment.

Count 2; A1 is sentenced to 30 years' imprisonment

A2 is sentenced to 30 years' imprisonment.

A3 is sentenced to 30 years' imprisonment.

The sentences to run concurrently from the date each appellant was convicted.

Since all the grounds have failed the appeal is dismissed.

Dated at Kampala this ....12th....day of ....October....2023.

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MWONDHA
JUSTICE OF THE SUPREME COURT

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PROF. TIBATEMWA-EKIRIKUBINZA
JUSTICE OF THE SUPREME COURT

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TUHAISE
JUSTICE OF THE SUPREME COURT

.....

CHIBITA
JUSTICE OF THE SUPREME COURT

.....

MUSOTA
JUSTICE OF THE SUPREME COURT

One of the Justices proceeded under rule 32(1) of this Court and declined to append her signature.
delivered by me Faith Mwondha
on behalf the Coram.
12/10/2023

12/10/2023