

for Aggravated Robbery c/s 285 and 286(2) of the Penal Code Act. At conclusion of trial, he was acquitted of the charge of Aggravated Robbery. He was however convicted of the lesser offence of simple robbery c/s 285 and 286(1) of the Penal Code Act. He was sentenced to 20 (twenty) years imprisonment and ordered to pay to the victim of the offence shs. 200,000= (two hundred thousand shillings only) as compensation under Section 286(4) of the Penal Code Act.

The appellant appealed to this Court only against sentence. The ground of appeal set out in a supplementary Memorandum of Appeal being:-

“That sentence of 20 years imprisonment, compensation of shs. 200,000= (two hundred thousand shillings only) on the appellant was excessive in the circumstances”.

Counsel C.A. Kateeba appeared for the appellant on state brief, while Principal State Attorney Brian Kalinaki, represented the respondent.

The facts of the case, as found established by the trial Court, were that on 26.09.2010 at about 2.00 a.m. at night at Bisendwa I village, Bundibugyo District, the appellant, together with others, forcefully broke the door by hitting the same with a stone, of the house of one Eziresi Mumbere (Pw1) who was inside together with her children. They then robbed her of shs. 140,000=. She made an alarm which was answered by neighbours Pw2 and Pw3. The appellant was arrested while running away from the robbery scene. He was handed over to the LC I Chairman of the area Pw4, and on being searched, the sum of shs. 140,000= robbed from the victim was found on him. He was subsequently charged, prosecuted and convicted of simple robbery on 11.09.2013 and was sentenced on so 19.09.2013.

With leave of Court to appeal against sentence only being granted, appellant's Counsel submitted that the sentence of 20 years imprisonment was excessive given the fact that no injuries were inflicted upon the victim of the robbery, the appellant was a first offender, the property of shs. 140,000= taken in the course of the robbery was recovered and returned

to the victim and the maximum sentence for simple robbery is life imprisonment, which for purposes of the Prisons Act, is 20 years imprisonment. The sentencing guidelines issued by the Uganda Judiciary also had 3 years imprisonment as the minimum sentence for simple robbery.

Counsel invited Court to consider the cases of Adam Owonda vs Uganda Cr. Appeal No. 8 of 1994 (SC) and HARUNA TURyakira & 2 Others vs Uganda: Cr. Appeal No. 146 of 2003 (COA) where the facts had a resemblance to those in this appeal and yet the sentences imposed upon appellants in those cases were less than the one imposed upon the appellant in this appeal. Counsel prayed for the sentence to be reduced.

As to the compensation order, Counsel submitted that the order had been made contrary to the law as there was no evidence that the victim of the robbery (Pwl) had suffered any injuries and the sum of shs. 140,000= robbed from her had been recovered and returned to her. Counsel prayed that the compensation order be vacated by this Court.

Counsel for the respondent maintained that the sentence of 20 years imprisonment was appropriate in the circumstances and was in compliance with the sentencing guidelines.

As to the compensation order, respondent's Counsel submitted that the same was necessary as the victim of the robbery had suffered loss as the door of her house had been damaged in the course of the robbery. He prayed for the term of imprisonment of 20 years and the compensation order to be maintained and the appeal be dismissed.

Being an appellate Court we are enjoined by the law not to lightly interfere with a sentence imposed by the trial Court unless we are satisfied that sufficient grounds exist to justify an alteration of such a sentence. As an appellate Court we can only vary such a

sentence of the lower trial Court if it is evident that the trial Judge acted upon some wrong principle, or overlooked some material factor, or that the sentence is manifestly harsh and/or excessive in view of the circumstances of the case. See: **OGALO s/o OWOURA VS R [1951] 21 EACA 70** which was followed by this Court in **Yusufu Kironde vs Uganda: Court of Appeal Criminal Appeal No. 44 of 1996**.

The appellant was sentenced on 19.09.2013 when the **Constitution (sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013** were already operative. Objective 3(e) of the Guidelines is to the effect that the Guidelines are to provide a mechanism that will promote uniformity, consistency and transparency in sentencing. Consideration of past sentencing decisions by Courts of Judicature is therefore essential for achieving the said objective.

A sentence of 8[^] years imprisonment was confirmed by the Supreme Court as appropriate for simple robbery in **Adam Owonda v Uganda, Criminal Appeal No. 8 of 1994** (supra). The appellant in that case had been indicted in the High Court for aggravated robbery. He was acquitted of the charge but was convicted of the lesser offence of simple robbery on the ground that the gun used was not shown to be capable of releasing bullets. He appealed against sentence only contending, inter alia, that the term of imprisonment of 8 1/2 years was manifestly excessive. Disallowing this part of the appeal the Supreme Court held:

“We see no merit in the appeal. Robbery is a serious offence. The offence in question carries a maximum of life imprisonment which in this country is 20 years. The sentences in this type of case range from 8 to 14 years in the High Court”.

We have also considered the decision of this Court in **Criminal Appeal No. 146 of 2003: Haruna Turyakira & 2 Others vs Uganda (Supra)** where the appellants, though charged with aggravated robbery, were convicted of the lesser cognate offence of simple robbery and were each sentenced to 14 years imprisonment; as well as

each to pay compensation of shs. 800,000= to the victim of the robbery and after serving sentence of imprisonment, to be under police surveillance for 3 years.

The facts of the **Turyakira case** were that the appellants had attacked the victim and his family members at night at 2.00a.m. in is their house at Kasambya, Mubende District, on 27.05.2000. The robbers took shs. 2.5 million from the victim and used a panga in the course of the robbery. The trial Judge found that aggravated robbery had not been proved, but that simple robbery had been proved beyond reasonable doubt against each appellant. On appeal, this Court dismissed the appellants' appeal both as to conviction and sentence of 14 years imprisonment of each appellant. The Court confirmed the said sentence as appropriate.

In **Supreme Court Criminal Appeal No. 16 of 1999, KYAMANYWA SIMON VS UGANDA** (which later was the subject of **Constitutional Court Reference No. 10/2000** on another Constitutional issue), the Supreme Court left undisturbed the sentence of six years imposed upon the appellant for simple robbery. The sentence was as a result of an appeal by the appellant to the Court of Appeal against a conviction for aggravated robbery and a sentence of death by the High Court at Masindi. On appeal the Court of appeal set aside the said conviction and sentence, but substituted the same with a conviction for simple robbery and sentenced the appellant to six years imprisonment, which the Supreme Court left undisturbed.

The facts of the case were that appellant, and others, had on 26.05.1994 at Kijuujubwa village, Masindi District, robbed one September Mathias of a Radio Cassette and a Torch. Though at trial, it was asserted that a deadly weapon, that is a pistol, was used in the course of the robbery, the Court of appeal held that the use of the deadly weapon in the course of the robbery had not been proved. Hence the substitution of the conviction for simple robbery and a sentence of six years imprisonment.

The sentence of seven years imprisonment for simple robbery was held to be appropriate in the High Court case of **Lt. Col. Badru Kiyingi vs Uganda (HCCA 9/97 (Musoke-Kibuka, J.))**. The appellant, a Lieutenant Colonel in the army hijacked a Tata Lorry, is took the goods it carried as well as its engine after the lorry had been stopped at night at gun point. The engine was found in the home of the appellant. The appellant just stated in Court that he did not know anything about the engine. He was convicted by the Magistrate's Court and sentenced to seven years imprisonment which the High Court confirmed on appeal. The case, though of the High Court, is persuasive, given its facts.

We have subjected to fresh appraisal of the facts that were placed before the trial Court upon which the said Court proceeded to determine the sentence of 20 years imprisonment imposed upon the appellant.

We agree with the submission of Counsel for the appellant that there was no credible evidence adduced as to what physical injuries the victim suffered. While she stated that the attackers hit her, she also self-contradicted herself when she stated that:

“I was not assaulted at all by the attackers”. No medical evidence was adduced as to any injuries suffered by the victim. It is thus safe to conclude that the victim suffered no physical injuries in the course of the robbery.

The then Court of Appeal for East Africa held in **Josephine Arissol vs R [1957] EA 447** that:-

“It is unusual to impose a maximum sentence on a first offender and it is wrong to depart from the rule of practice because he might have been convicted of a graver offence”.

It is not in dispute that the appellant in this appeal was a first offender. There was thus no justification for submitting him to a sentence of imprisonment of 20 years which according to Section 47(6) of the Prisons Act is taken as the maximum period of confinement in prison in

a sentence of life imprisonment for purposes of calculating remission of a sentence. The Section provides:

“47. Remission of part of sentence of certain prisoners.

(6) For the purpose of calculating remission of a sentence, imprisonment for life should be deemed to be twenty years imprisonment”.

Further, the sentencing guidelines in their part III: **Sentencing ranges for robbery:** the range for simple robbery is given as being from 3 years up to imprisonment for life.

The past Court decisions, some of which we have considered in this appeal, are also in the main, in line with what the Supreme Court stated in **Owonda v Uganda** (Supra) that the range of sentencing for simple robbery is from 8 to 14 years imprisonment in the High Court.

We have thus come to the conclusion that the sentence of 20 (twenty) years imprisonment that was imposed upon the appellant was harsh and manifestly excessive given the fact that he was a first offender and had spent on remand a period of 3 (three) years. We accordingly set the same aside. We substitute the same with a

sentence of 12 (twelve) years imprisonment and the same is to run from 11.09.2013, the date of conviction of the appellant.

As to the order that the appellant pays compensation of shs. 200,000= to the victim, our appreciation of Section 286(4) of the Penal Code Act, under which such compensation order has to be made, is that it is a pre-requisite that before making the said order, there must be evidence before the trial Court as to the injury or loss suffered by the person to whom the compensation is to be paid.

In this particular appeal, as already pointed out, the victim did not adduce any evidence of any injury suffered. The shs. 140,000= that was taken in the robbery was recovered and handed back to the victim.

While it was possible that the compensation so ordered could be recovered by a Civil Suit, however the Court made no inquiry at all as to how it came to determine that the sum of shs. 200,000= was the reasonable sum to be paid as compensation. The appellant was not given any opportunity at all to say something about the whole issue of payment of compensation. He was thus condemned unheard in this regard: See: **SELEMANI vs REPUBLIC [1972] EA 269**

We accordingly come to the conclusion that the compensation order of requiring the appellant to pay shs. 200,000= to the victim was made contrary to the law and the same cannot be left to stand.

In conclusion this appeal is allowed. The sentence of 20 (twenty) years imprisonment imposed upon the appellant is hereby set aside. It is substituted by an order that the appellant, KATUKU ASIRAFU, is to serve a sentence of 12 (twelve) years imprisonment, and the sentence is to begin from the date of his conviction that is 11.09.2013.

The order whereby the appellant was ordered to pay shs. 200,000= 35 compensation to the victim of the robbery is hereby set aside.

Dated 18th day of December 2014

Hon. Justice Remmy Kasule

Justice Court of Appeal

Hon Justice Eldad Mwangusya

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Justice Court of Appeal

Hon Justice F.M.S Egonda Ntende

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Justice Court of Appeal