

**THE REPUBLIC OF UGANDA**

**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**

**CRIMINAL APPEAL NO. 0072 OF 2014**

*(An appeal from the judgment of the High Court of Uganda at Nakawa delivered by Elizabeth Nahamya, J on 31<sup>st</sup> May 2014 in Criminal Case No. 234 of 2014)*

**KYEYUNE ERIC :::APPELLANT**

**VERSUS**

**UGANDA :::RESPONDENT**

**CORAM: HON. LADY JUSTICE ELIZABETH MUSOKE, JA  
HON. LADY JUSTICE HELLEN OBURA, JA  
HON. MR. JUSTICE EZEKIEL MUHANGUZI, JA**

**JUDGMENT OF THE COURT**

**Introduction**

This appeal arises from the decision of the High Court of Uganda at Nakawa in Criminal Session Case No.234 of 2014 before Nahamya, J delivered on 31<sup>st</sup> May 2014, in which the appellant was convicted on his own plea of guilty, of the offence of aggravated robbery contrary to Section 285 and 286 of the Penal Code Act, Cap 120 and sentenced to 11 years and 10 months imprisonment.

With leave of this Court, and in terms of *Section 132 (1) (b)* of the Trial

Indictment Act Cap 23, the appellant now appeals against sentence only. The appellant sets forth one ground of appeal as follows:-

***The learned trial judge erred in law and fact when she imposed a sentence of 11 years and 10 months imprisonment on the appellant who had pleaded guilty to the offence, which is deemed to be harsh taking into account the circumstances of this case considering the appellants age and other mitigating factors before sentencing.***

### **Background of the case**

The brief facts as far as we could ascertain from the record are that on 7<sup>th</sup> January, 2013 at Gaz Petrol Station Kajjansi in Wakiso District, the appellant, Kyeyune Eric and others still at large robbed one Achengo Beatrice of cash of Ug. Shs. 66,000,000/= (Sixty Six Million Shillings) and at or immediately before or immediately after the time of the said robbery threatened to use a deadly weapon to wit a knife on the said Achengo Beatrice. He was arrested, convicted and sentenced to 11 years and 10 months imprisonment following his own plea of guilt.

Being dissatisfied with the above sentence, he has now appealed to this Court.

### **Legal Representation:**

At the hearing of this appeal, Mr. Mark Bwenje, learned counsel appeared for the appellant on State Brief, while Mr. David Ndamurani Ateenyi, the Senior Assistant Director of Public Prosecution represented the respondent.

The appellant was present.

### **Appellant's Submissions**

Counsel for the appellant submitted that while passing sentence, the learned trial Judge did not take into account the period the appellant had spent in pre-trial detention. He submitted that the appellant was arrested on 14/1/2013 according to the record and sentenced on 31/5/2014, after 1 year and 4 months. The failure to consider this period rendered the sentence passed illegal and contravened Article 23(8) of the Constitution.

Counsel asked Court to find that the sentence was illegal, set it aside and invoke **Section 11** of the Judicature Act, Cap 13, and in its discretion impose an appropriate sentence in the circumstances.

Counsel submitted in the alternative that the sentence of 11 years and 10 months imprisonment was harsh and excessive considering the fact that the appellant pleaded guilty, an indication that he was remorseful and had come to realize the folly of his conduct. Further, that the appellant had a family and was a first offender who should have been given a reasonable sentence to enable him to be re-integrated back into society. He contended that the learned trial Judge ought to have taken into account these mitigating factors in favour of the appellant.

Counsel invited Court to consider a term of 6 years' imprisonment to be appropriate and just in the circumstances.

### **Respondent's Submissions**

Counsel for the respondent conceded that the learned trial Judge had not

arithmetically deducted the period the appellant had spent on remand contrary to Article 23 (8) of the Constitution and so this Court could interfere with the sentencing powers of the trial court under Section 11 of Judicature Act, Cap 13.

However, the learned counsel contended that according to the Sentencing Guidelines, the offence for which the appellant was convicted carried a maximum sentence of death with a sentencing range from 30 years up to death, and as such a term of 11 years and 10 months was within the said range. In his view, the learned trial Judge was very lenient in sparing the appellant the death penalty and thus asked this Court to correct the arithmetical errors and uphold the lower Court's sentence.

### **Resolution of Court**

We have carefully listened to the submissions of both counsel, and carefully perused the court record and authorities cited to us.

We are alive to the requirement that as a first appellate court we must re-appraise all the evidence before court and make our own inferences on all issues of law and fact. This requirement is set out in ***Rule 30 (1) of the rules of this court. See also Fr. Narcensio Begumisa & others vs. Eric Tibebaaga, Supreme Court Criminal Appeal No. 017 of 2002; and Kifamunte Henry vs. Uganda, Supreme Court Criminal Appeal No.10 Of 1997.***

Further still, this Court can only interfere with the sentence of the trial court if that sentence is illegal or is based on a wrong principle or the court has

overlooked a material factor, or where the sentence is manifestly excessive or so low as to amount to a miscarriage of justice. ***See Kizito Senkula vs. Uganda, Supreme Court Criminal Appeal No. 24/2001.***

We shall bear the said principles in mind, as we consider this appeal.

While passing sentence the learned trial Judge stated as follows:-

***"Though convict has no previous conviction, he has previous arrest for aggravated robbery; whether there was no injury-victim sustained harm as per PE5; paragraph 32 (k) any other fact is that convict is willing to assist prosecution to try others. I therefore agree with sentence bargained for 12 years imprisonment. The period spent on remand is hereby deducted. You'll serve a sentence of 11 years and 10 months imprisonment. You are entitled to your remission".***

It is evident from the above that, the learned trial Judge erred when she failed to arithmetically deduct the exact period of 1 year and 4 months which the appellant had spent in lawful custody as required by Article 23 (8) of the Constitution, which provides as follows:-

***"Where a person is convicted and sentenced to a term of imprisonment for an offence, any period he or she spends in lawful custody in respect of the offence before the completion of his or her trial shall be taken into account in imposing the term of imprisonment."***

According to the court record, the appellant was admitted in custody on 14<sup>th</sup> January, 2013 and he was sentenced on 31<sup>st</sup> May 2014 which makes it a

period of 1 year and 4 months on remand. We note from the above sentencing that the learned trial Judge only took into account 1 year and 2 months as the period the appellant spent on remand. This was an arithmetical error which makes the sentence imposed on the appellant illegal. The sentence is, therefore, hereby set aside.

Having held as we have, we now invoke ***Section 11 of the Judicature Act, Cap 13*** which grants this Court, while hearing an appeal, the same power as that of the trial Court to impose a sentence we consider appropriate in the circumstances of the appeal. That section provides as follows:-

***"For the purpose of hearing and determining an appeal, the Court of Appeal shall have all the powers, authority and jurisdiction vested under any written law in the court from the exercise of the original jurisdiction of which the appeal originally emanated."***

We take note of the Plea Bargain Agreement signed by the parties on 24<sup>th</sup> May, 2014 and the terms thereof. The parties had agreed to 12 years imprisonment.

In view of the foregoing, we consider a sentence of 12 years to be appropriate from which we deduct the 1 year and 4 months the appellant spent in pre-trial detention. The appellant shall, therefore, serve a term of 11 years and 8 months imprisonment from the 31<sup>st</sup> day of May, 2010, the date of conviction.

We so order.

Dated at Kampala this...<sup>25<sup>th</sup></sup>.....day of <sup>June</sup>.....2019.



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**Elizabeth Musoke**

**Justice of Appeal**



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**Hellen Obura**

**Justice of Appeal**



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**Ezekiel Muhanguzi**

**Justice of Appeal**