THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT MBARARA

CRIMINAL APPEAL NO. 22 OF 2017.

[CORAM: ELIZABETH MUSOKE, STEPHEN MUSOTA, JJA &REMMY KASULE, Ag. JA]

BETWEEN

MUSIIMENTA AMON:: APPELLANT

VERSUS

UGANDA:::RESPONDENT

[Appeal *from the decision of the High Court at Mbarara sitting at Bushenyi before Hon.Justice Duncan Gaswaga dated 20th, October, 2016 in Criminal Session Case No. 0072 of 2011]*

JUDGMENT OF THE COURT

This appeal arises from the judgment of the High Court at Mbarara sitting at Bushenyi which tried and convicted the appellant for the offence of aggravated robbery contrary to sections 285 and 286 (2) of the Penal Code Act. The appellant was found guilty of the offence and sentenced to 25 years imprisonment.

In addition to the original memorandum of Appeal filed in this Court by Learned counsel for the appellant, with leave of court, appellant's counsel filed a supplementary memorandum of appeal and abandoned ground 3 of the original memorandum of appeal. The grounds of appeal raised are: -

1. That the learned trial Judge erred in law and fact in finding that the ingredients of theft of property and usage of deadly weapon (to inflict pain and injury on PW1) had been proved beyond reasonable doubt.

2. That the learned trial Judge erred in law and fact in relying on the evidence of a single identifying witness.

3. That the learned trial Judge erred in law and fact in rejecting the defence of alibi put forward by the appellant.

4. That the learned trial Judge erred in law and fact when he passed an illegal and a manifestly harsh and excessive sentence on the appellant.

Background:

The facts of the case, that came out at trial, were that on the night of 12th of May 2011 at Kigarama Compassion office in Mitooma District, the appellant together with one Tugume Alex robbed of No.12647 SPC Bainomugisha Sabastiano a gun (SMG Rifle) No.56-36840 with 28 rounds of ammunitions, a canon camera type 5 x 100 digital, two flash cards, cash of ug.shs 160,000/= (One hundred sixty thousand shillings), all items being valued at Ug.shs 2,560,000/= (two million five hundred sixty thousand shillings) and at or immediately before, or immediately after the time of robbery, used deadly weapons to wit a panga and iron bars on the said No. 12647 SPC Bainomugisha Sabastiano.

The appellant and Tugume Alex denied the offence and a full trial was held by the learned trial Judge (Gaswaga, J.). The appellant was found guilty of the offence as charged and sentenced to 25 years imprisonment. Tugume Alex, the co-accused was acquitted of the offence and released at the closure of the prosecution case on a no case to answer.

Dissatisfied, the appellant lodged this appeal against both conviction and sentence.

Legal representation

At the hearing of this appeal, the appellant was represented by learned counsel Henry Kunya on state brief, while learned State Attorney Peter Mugisha was for the respondent.

Both counsel for the respective parties, with permission of this Court, filed written submissions.

Due to the obtaining Government Health Regulations to prevent the spread of the Covid 19 virus, it was not possible to have the appellant physically present in Court. He remained confined in the Government Prison, Mbarara. However, through video conferencing and communication technology of the Court of Appeal, the appellant fully participated in the appeal Court proceedings and was in contact with his legal counsel throughout the hearing of the appeal.

Submissions for the Appellant

Ground 1

On the first ground, Appellant's counsel submitted that the two ingredients of theft and possession of a deadly weapon in the charge were not proved beyond reasonable doubt by the prosecution against the appellant.

Counsel contended that PW3 gave different serial numbers of the same gun alleged to have been stolen from PW1 Bainomugisha Sabastiano. The numbers were 56/3684484028, 56368481, and 56/3684481. This fact, according to appellant's counsel, rendered this piece of evidence to be totally unreliable as a single gun could not have had three different serial numbers.

Further, the ownership of the alleged robbed properties stated in the charge, the subject of the offence, was never stated in the charge, let alone proved beyond reasonable doubt by the prosecution. Properties that had no owner could not be the subject of theft or robbery.

Learned counsel for the appellant also submitted that, since the gun allegedly stolen from PW1, and the panga stated to have been used to inflict injuries on PW1, had not been physically exhibited in the trial Court proceedings, the medical evidence to prove the alleged injuries inflicted on PW1 had also not been adduced in Court, the prosecution's case ought to have collapsed. The Learned trial Judge was therefore wrong to have convicted the appellant of the offence of aggravated robbery on the basis of that very weak prosecution evidence. Counsel relied on the case of **Odong David Livingstone v Uganda; Court of Appeal Criminal Appeal No. 79 of 2017 (unreported),** where the Court held that failure to prove the essential ingredients of the offence is fatal to the prosecution's case. Learned Counsel invited this court to allow ground 1 of the appeal.

Ground 2

On ground 2 of the appeal, Appellant's Counsel submitted that the learned trial Judge relied on the evidence of a single identifying witness without looking for corroboration of the evidence of this witness or cautioning himself of the danger of relying on the evidence of a single identifying witness as the basis for a conviction of the appellant.

Since the offence was allegedly committed at night at 1:00am and the identifying witness PW1 had only seen the appellant once, three months prior to the incident, and the very identifying witness PW1, was also bleeding all over his eyes from the two cut wounds inflicted on his head at that material time, all these factors made the evidence of a correct identification of the appellant by PW1 as the single identifying witness PW1, to be very suspect and unreliable.

Relying on the case of **Kanakulya Muhamed v Uganda; Court of Appeal Criminal Appeal No.60 of 2003,** learned counsel for the appellant contended that the learned trial Judge ought to have considered not only the conditions that favoured correct identification; but also those material factors and conditions that

could have adversely affected the identification. The learned trial Judge had not done so. Learned Counsel therefore invited this Court to find that the learned trial Judge was in error to come to a conclusion that PW1 properly identified the appellant as the one who committed this offence.

Learned counsel also contended that the manner in which the identification parade was conducted was contrary to the established identification parade guidelines which require a mandatory minimum number of 12 and not of 8 people to be lined up with 2 suspects which was the case in the identification parade conducted in this case whereby PW1 identified the appellant as one of his attackers. Counsel thus contended that the evidence of the identification parade ought not to have been relied upon by the learned trial Judge as part of the evidence upon which the appellant was convicted of the offence of aggravated robbery.

Learned counsel for the appellant thus prayed this Court to allow ground 2 of the appeal.

Ground 3

On ground 3, appellant's learned counsel submitted that the trial Court ought to have accepted the evidence of the appellant, which was not in any way disproved, that on the night of the alleged robbery of 12th May 2011, the appellant was at home preparing for his sister's give away ceremony scheduled for the next day. The appellant went to bed at about 1:00am. The appellant's wife DW2 also corroborated the appellant's alibi. The learned trial Judge disregarded, without any sound reason, the evidence of DW2, the appellant's wife, as to where the appellant was at that material time, learned counsel for the appellant so submitted. Counsel contended that instead the learned trial Judge elected to rely on the evidence of a single identifying witness PW1, which evidence, was very suspect and unreliable.

Counsel thus prayed that this honourable court finds that the appellant's alibi was not disproved by the prosecution and therefore ought to have been accepted by the learned trial Judge. Counsel prayed this Court to allow ground 3 of the appeal.

Ground 4

In respect of ground 4, appellant's Counsel submitted that the learned trial Judge erroneously failed, while sentencing the appellant, to consider the period spent by the appellant on remand. This rendered, the sentence passed at trial upon the appellant to be illegal and as such the same ought to be set aside.

Counsel relied upon **Supreme Court Criminal Appeal No.25 of 2015; Moses Rwabugande v Uganda (unreported),** for this submission.

Learned appellant's counsel submitted, in the alternative that the sentence of 25 years imprisonment for the offence of aggravated robbery passed upon the appellant was manifestly harsh and excessive, given the particular circumstances of this case. He prayed this Court to set aside and substitute it with a reduced sentence, just in case the appellant's appeal is not allowed as to his conviction.

In conclusion, learned counsel for the appellant prayed this court to allow all the grounds of the appeal, quash the conviction of the appellant, set aside the sentence and order for the appellant's immediate release.

Submissions for the Respondent;

Counsel for the respondent opposed the appeal and supported the findings and decision of the learned trial Judge.

Ground 1

On ground 1 of the appeal, learned counsel for the respondent submitted that the two ingredients of theft and possession and use

of a deadly weapon were proved by the prosecution beyond reasonable doubt. The prosecution evidence, not controverted by the defence evidence, proved beyond reasonable doubt that a gun as well as Ug. shs. 25,000/= were stolen from PW1 and in the course of that theft a panga, an iron bar and the gun itself were used to threaten and to actually inflict injuries upon PW1.

Counsel argued that in proving the offence of aggravated robbery, what is material, is to prove beyond reasonable doubt, that the accused had possession of a deadly weapon that instilled fear or caused injury to the victim at the material time of the commission of the offence. This is according to **Sections 285 and 286(2) and (3)** of the Penal Code Act.

Learned counsel for the respondent further submitted that it is immaterial whether the weapon used in the crime was recovered or not recovered for the purpose of exhibiting the same in court. What ought to be proved beyond reasonable doubt is that such a weapon is well described to the trial Court by the witness against whom it was used, and others, and court believes them. This was done in this case and the trial Judge believed the evidence of PW1 and the other prosecution witnesses; and disbelieved the evidence of the appellant DW1 and that of the appellant's wife DW2 as being very unreliable.

Respondent's counsel relied on the case of **Mumbere v Uganda; SCCA No. 15 of 2014**, where the Supreme Court held that, in an appropriate case, where exhibits cannot be recovered and exhibited because they are either hidden or destroyed or for some other reasons, all that is required of the prosecution is to adduce evidence giving a description of the items constituting the exhibits and such evidence is sufficient to prove, beyond reasonable doubt, once the trial Court is so satisfied, the existence of such exhibits. This evidence had been adduced in this case and the trial Court had rightly held that the ingredients of theft of property and usage of

deadly weapons to inflict pain and injury on PW1, the victim of the offence, had been proved beyond reasonable doubt.

Learned respondent's counsel further submitted that with regard to the stolen money it was immaterial that the prosecution had proved beyond reasonable doubt that only Ug. shs 25,000/= (twenty-five thousand) and not the amount of Ug.shs. 160,000/= (one hundred sixty thousand) stated in the charge sheet had been stolen from PW1.

Ground 1 of the appeal had therefore to be disallowed.

Ground 2

On ground 2 of the appeal, counsel submitted that there was no legal requirement nor a practice of Court requiring that the evidence of a single identifying witness always had to be corroborated. He contended that such evidence can be relied upon solely by court provided that court finds it to be truthful, credible and reliable. Accordingly, PW1's evidence that he correctly identified the appellant as being one of his (PW1) attackers that fateful night was properly relied upon by the learned trial Judge to convict the appellant of the offence. The fact that 8, and not 10 people were used in the identification parade at Mitooma Police Station, never caused any injustice to the prejudice of the appellant and therefore the identification parade was proper in law.

Learned counsel prayed this Court to disallow ground 2 of the appeal.

Ground 3

On ground 3 of the appeal, learned counsel for the respondent contended that upon proper evaluation of the evidence on record, the learned trial Judge reached a proper finding when he held that he was convinced beyond reasonable doubt that the appellant lied in his testimony to the trial Court when he stated that there was no identification parade conducted on 17 May 2011 at Mitooma Police

Station and also, that no police dogs were taken in his area where he stayed and that he learnt of the robbery four days later, and yet he had stated otherwise in his Police statement admitted in evidence as exhibit PEII, which statement the appellant had also falsely denied making and signing.

The learned counsel for the respondent maintained that the trial Court was also right to disbelieve the evidence of the appellant's wife who testified to have been with her husband holding him tight throughout the entire night of 12 May 2011, the day the offence was committed. Counsel thus prayed this court to find that ground 3 of the appeal has no merit and to disallow the same.

Ground 4

On ground 4 of the appeal, respondent's counsel submitted that the appellate court cannot interfere with the sentencing discretion of the trial court as was held in the case of **Kiwalabye v Uganda;Supreme Court Criminal Appeal No.143 of 2001** unless it is satisfied that the sentence imposed by the trial Court was manifestly harsh and/or excessive, or was so low so as to amount to a miscarriage of justice, or where the sentencing trial court ignored to consider an important matter or circumstance which ought to have been considered when passing sentence, or where the sentence imposed is wrong in law or in principle.

Learned counsel for the respondent contended that none of the above stated factors are in issue in the case of the appellant to justify this court, as the first appellate Court, to interfere with the sentencing discretion of the trial Judge. The trial judge considered both the aggravating and mitigating factors as well as the period the appellant spent on remand of 9 months before rightly sentencing the appellant to 25 years imprisonment. There was no illegality with the said sentence, respondent's counsel so submitted.

Learned counsel for the respondent therefore prayed this court to also disallow this ground 4 of the appeal and to dismiss the whole appeal for luck of merit since all the grounds of the appeal had failed.

RESOLUTION BY COURT.

As the first appellate court, our duty is to review and re-evaluate the evidence adduced before the trial Court, by subjecting the same to fresh scrutiny, draw inferences therefrom and reach our own conclusions, bearing in mind that we did not have, like the trial Court had, the opportunity to hear, see and observe the witnesses testify at trial. Therefore on issues that depend on the demeanour of a particular witness who testified at the trial, the observations of the trial Judge have to be not disregarded or rejected by the appellate Court, unless if there is very cogent evidence for so holding. See: **Rule 30(1)(a) of the Judicature (Court of Appeal Rules) Directions SI 13-10;** and also the case of **Kiwalabye v Uganda, Supreme Court Criminal Appeal No. 143 of 2001.**

We shall carry out the above stated duty, as the first appellate Court, as we resolve each ground of the appeal.

Ground 1

The appellant asserts in this ground 1 of the appeal that the prosecution did not prove beyond reasonable doubt the ingredients of theft of property and use of a deadly weapon in the commission of the alleged offence of aggravated robbery.

We note that in the Charge sheet, it was clearly stated that on 12th May 2011 at night at Kigarama Compassion offices, Mitooma District a gun SMG Rifle No. 56-36840 was robbed from No. 12647 SPC Bainomugisha Sabastiano.

PW1 No. 12647 SPC Bainomugisha Sabastiano testified as PW1 as to how the gun he had that night at about 1:00am at Kigarama Children

Development Centre offices and stores, Mitooma District, was forcefully taken away from him by the attackers, one of whom was the appellant, whom he recognized in the course of the attack and whom he had seen once, three months earlier, when the said attacker, the appellant, had gone to repair houses that the Bitereko Police Station rented from the appellant's father.

While it is true that PW1 did not identify the gun he had that was robbed from him by way of physically pointing it out in the course of the trial and/or by reciting its number to Court, the evidence that PW1, as a member of the Police force had a gun, while on patrol at Kigarama Children Development Centre Stores and offices; and that this gun was forcefully taken away from him on 12th May 2011 at about 1:00am and those who took it away did so by use of a panga to cut him on the head, an iron bar to hit his arm and a gun bayonet to stab his right leg, stood unchallenged. PW1 showed to the learned trial Judge the evidence of the cuts on his head and forehead.

The fact that the gun that was robbed from PW1 and the panga and iron bar and other instruments used in the robbery were not exhibited, was not fatal to the prosecution case. **The Supreme Court in Criminal Appeal No. 17 of 2009; Mutesasira Musoke v Uganda** has held that in a case of aggravated robbery where the exhibits used in the commission of that offence, for some reasons, such as being hidden or destroyed or purposely being kept away cannot be exhibited in the trial Court, the prosecution is entitled to adduce evidence of the description of those items or weapons used in the commission of the offence as well as that of the injuries suffered by the victim of the offence, as sufficient and proper proof, beyond reasonable doubt of the ingredients of the offence.

In this case PW1 in his testimony to the trial Court clearly described the weapon of a panga that was used by the attackers to cut him on his head, then the iron bar to hit his arm and the gun bayonet to stab him in his right leg. He also testified as to the fact that the gun he had was forcefully taken away from him. He also described to

Court and showed to the Court marks on his various parts of the body, of the injuries that had been inflicted upon him by his attackers in the course of the theft.

The learned trial Judge, on considering the prosecution and defence evidence on this point, concluded that the prosecution had proved beyond reasonable doubt, that these weapons had been used in the robbery of which the appellant had been tried and that the injuries suffered by PW1 on his body had been inflicted upon him in the course of the robbery. Therefore failure to produce these items as exhibits to Court, at the trial, cannot be a ground for the appellant to assert that his conviction for the offence of aggravated robbery was wrong in law or fact by reason that the same was never proved beyond reasonable doubt.

As to the discrepancies in the serial number of the gun, it has already been held that the failure to exhibit the gun that was stolen from PW1 is not fatal to the prosecution case. Therefore the evidence of PW3 as to the inconsistencies in the serial numbers of the gun that was recovered is not of much significance, more so as PW3, clearly explained that the serial numbers could not be seen clearly given the condition of the gun which had been hidden in such a filthy and dirty place where it was found.

We therefore find that these inconsistencies did not go to the root of the case.

In the charge sheet, it was stated that in the course of the robbery a sum of shs. 160,000/= (One hundred and sixty thousand) shillings was stolen.

The evidence of PW1 was to the effect that after his attackers had assaulted him with blood flowing from all over him, they tied his arms and legs, put him at gun point, tied his head across the mouth with the belt from the guard's overcoat, checked his pockets found therein and took out Ug shs. 25,000/= and then ran away with the money.

The evidence of the theft of Ug.shs. 25,000/= from PW1 by his attackers remained uncontroverted.

We therefore agree with the trial Court finding that the ingredients of theft of property of PW1 and usage of deadly weapons in carrying out that theft were proved beyond reasonable doubt against the appellant. We find no merit in ground one of the appeal.

Ground 2

This ground faults the learned trial Judge for relying on the evidence of a single identifying witness PW1 to convict the appellant.

PW1 was emphatic in his evidence on the issue of identification of the appellant that:

"I identified A1 (appellant) from amongst many suspects. I managed to identify him because of the time I spent struggling with him and his extended forehead".

The learned trial Judge considered both the factors that did not favour proper identification and that those enabled proper identification of the appellant by PW1.

Those that did not favour proper identification were the fact that the offence was committed at night, there was a struggle between PW1 and his attackers, and PW1 had injuries on him and was bleeding. Those that favoured proper identification were that Pw1 knew the appellant before the incident, he spent 15 minutes in the scuffle with his attackers including confronting the appellant face to face. There was also moonlight which facilitated PW1 to identify the appellant as one of his attackers. Indeed even at the KIU hospital where PW1 was taken from the scene of the crime, for medical treatment, PW1 mentioned the appellant to the police who went to interview him, as the one he had seen to be among his attackers.

The learned trial Judge after appreciating all the above factors concluded that PW1 had remained normal and had not lost his

senses in the course of the attack. He had been able to identify the appellant. We therefore find that the learned trial Judge properly relied on the evidence of a single identifying witness PW1, and considered the conditions that favoured proper identification and those that did not favour. This was the proper approach to the issue. See: **Supreme Court Criminal Appeal No. 48 and 49 of 1999 RA 78064 CPL Wasswa & Ninsima Dan v Uganda.**

We, like the learned trial, are satisfied that a proper parade was held at Mitooma Police Station where PW1 identified the appellant as one of his attackers. The mere fact that the identification parade was held using 8 people and not 10 was a minor matter, which in our considered view did not affect the validity of the identification parade.

Ground 2 of the appeal therefore also fails.

Ground three

On ground 3, whereby the learned trial Judge is faulted for rejecting the alibi of the appellant, we have carefully reviewed the evidence of the appellant and that of his wife (DW2) which was rejected by the trial judge. We note the inconsistencies in the appellant's evidence as pointed out by the learned trial Judge that the appellant lied about the police not having conducted an identification parade and that no police dogs were taken to the area where the appellant stayed and also where the robbery took place as well as his denial of making and signing a police statement Exhibit PE2. These pointed to deliberate untruthfulness on the part of the appellant. The learned trial Judge was thus justified to hold that the appellant's evidence was unreliable.

As to the evidence of DW2, the wife of the appellant, the learned trial Judge rejected her evidence stating that her evidence pointed to the deliberate untruthfulness when she testified to court that she spent the whole day and night of 12th May 2011 with her husband taking a

very close eye on him, going as far as claiming that during the night between 11:00pm and 5:00am she tightly held on to the appellant only releasing herself from him at 5:00am. This claim was a lie on the part of DW2 intended to cover the period of the robbery that took place at 1:10am of that night.

We appreciate as the law that the accused, now the appellant had no burden to prove his alibi. The burden was upon the prosecution to disprove the same and to place the appellant at the crime scene. See; **Kooky Sharma & another v Uganda; Supreme Court Criminal Appeal No. 44 of 2000.**

The prosecution through the evidence of PW1, which the learned trial Judge believed, squarely placed the appellant at the scene of the crime. There was no other independent evidence on record to support the assertion that the appellant spent the entire day and night at his home preparing for his sister's give away ceremony. Indeed, the appellant in his police statement, Exhibit PE2 which he falsely denied to be the author of, but which the learned trial Judge found that he was the one who made the statement at the police, did not state anything about spending that day and night of 12th/13th May 2011 preparing for the giveaway ceremony of his sister.

We are therefore not persuaded by the testimony of the appellant and that of DW2 and we find that the learned trial Judge was right to reject as unreliable, the evidence of both of them as regards to the alibi set up by the appellant.

Therefore ground 3 of the appeal also fails.

Ground 4

On ground 4 of the appeal, it is now well settled as the law that this court, as the first appellate Court, will only interfere with the sentence imposed by a trial court where the sentence is either illegal or founded upon a wrong principle of law. This court will equally interfere with the sentence, if the trial court did not consider, while

sentencing, material factors in the case or imposed a sentence which is harsh and manifestly excessive or too low in the circumstances of the case so as to amount to a miscarriage of Justice. **See; Bashir Ssali v Uganda; Supreme Court Criminal Appeal No. 40 of 2003.**

Nevertheless, in sentencing, this court ought to follow the principle of uniformity and consistency as was held in **Mbunya Godfrey v Uganda; Supreme Court Criminal Appeal No. 4 of 2011,** that although no two crimes are identical in all respects, Courts of law should, as much as possible, have consistency and uniformity in sentencing.

We have on our own had the benefit of considering the mitigating and aggravating factors as well as a number of Court decisions having some similarity with the case under consideration.

Aged 34 at the time of conviction, the appellant is still young, and capable of reforming into a better citizen. He is a first offender, a family person with a wife to support. He prayed for forgiveness from the victim and offered to pay compensation.

On the aggravating side, robberies were rampant, PW1 was cut with a panga, hit with an iron bar and stabbed with a gun bayonet, as if he was not a human being. He thus suffered a lot of pain and almost lost his life. He lost his money Ug. shs. 25,000/=. The appellant and his group paid no respect at all to PW1 as a member of the Uganda Police Force.

In **Bakabulindi v Uganda; Supreme Court Criminal Appeal No. 21 of 2015,** the appellant and another robbed the victim of his motorcycle and inflicted grievous harm on the victim leaving him unconscious. The appellant was convicted of aggravated robbery and sentenced to 15 years imprisonment which sentence was upheld by the Court of Appeal and the Supreme Court.

A sentence of 18 years imprisonment was imposed upon the appellant by this Court of Appeal in **Court of Appeal Criminal**

Appeal No. 32 of 2010, Abelle Asuman v Uganda, whereby the appellant had been tried and convicted of the offence of aggravated robbery. The Supreme Court left that sentence undisturbed in **Supreme Court Criminal Appeal No. 66 of 2016: Abelle Asuman v Uganda (19.05.2018).**

Under the **Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013**, the maximum sentence for aggravated robbery is death, starting point being 35 years imprisonment.

We find that in this case having appreciated the mitigating and aggravating factors as well as the court sentence precedents, and the Sentencing Guidelines, sentence of 25 years imprisonment passed upon the appellant was harsh and excessive which occasioned a miscarriage of justice.

We also note that, as regards the remand period, the learned trial Judge took into account, while sentencing the appellant, a period of 9 months as the period the appellant had spent on remand. This was a wrong period since the appellant had been arrested on 13th May 2011 and was on remand till the 20th October 2016, when he was convicted. This was a period of 5 years and 5 months on remand.

For the above reasons, we allow ground 4 of the appeal. The sentence of 25 years imprisonment passed against the appellant is hereby vacated. We invoke section 11 of the Judicature Act, Cap 13, which vests in this Court the jurisdiction of the trial Court to pass a sentence that we consider appropriate upon the appellant.

Appreciating all factors as here in stated above, we have come to the conclusion that the appellant be sentenced to 20 years imprisonment for the offence of aggravated robbery.

The period of 5 years and 5 months spent by the appellant in lawful custody is set aside from the sentence of 20 years imprisonment. Accordingly, the appellant is to serve a sentence of 14 years and 7

months imprisonment starting from the date of his conviction of 20th October, 2016.

Ground 4 of the appeal is therefore allowed.

In conclusion, the appeal of the appellant is dismissed as regards his conviction of the offence of aggravated robbery but allowed as to sentence in the terms stated herein above.

We so order.

Dated at Mbarara this..... day of .....2020.

20th Nov

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HON. LADY JUSTICE ELIZABETH MUSOKE, JA.

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HON. MR, JUSTICE STEPHEN MUSOTA, JA.

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HON. MR. JUSTICE REMMY KASULE, Ag. JA.