

5 **THE REPUBLIC OF UGANDA**

IN THE COURT OF APPEAL OF UGANDA

AT MBARARA

10 **CRIMINAL APPEAL NO.0008 OF 2008**

15 **1.MUCHUNGUNZI BENON }APPELLANTS**
2. MUCHUNGUZI THOMAS }

VS

UGANDARESPONDENT

20 **Coram: Hon Mr. Justice Kenneth Kakuru, JA**
Hon. Mr. Justice Byabakama Mugenyi Simon, JA
Hon. Mr. Justice Alfonse C. Owiny-Dollo, JA

25 **JUDGMENT**

This appeal arises from the decision of Hon Justice Mwangusya J
(as he then was) in the High Court at Mbarara in Criminal case NO.
044 of 2006 dated 4/02/08 in which the appellants were convicted
30 of aggravated robbery contrary to **Sections 285 and 286(2) of**
the Penal Code Act and sentenced to 15 years imprisonment.

Being dissatisfied with the decision of the High Court, they
appealed to this Court. The memorandum of Appeal is set out as
35 follows:-

1. That the learned trial Judge erred in law and fact when he rejected the defence of alibi put up by the 2nd appellant and thereby reached a wrong decision.

40 *2. The learned trial Judge failed to properly evaluate the evidence on record and arrived at a wrong decision.*

3. The learned trial Judge erred in law and fact by imposing a sentence of 15 years imprisonment on the appellants which sentence was harsh and manifestly excessive in the
45 *circumstances of the case.*

Representations

The appellants were represented by learned counsel Enock Twinamatsiko while the respondent was represented by Ms. Jenifer
50 Amumpaire, learned Principal State Attorney. Both appellants were in Court.

The Appellants' Case

Counsel for the appellant abandoned grounds 1 and 2 of the
55 appeal preferring to argue only ground 3 which is in respect of sentence only.

Upon application by counsel, this Court granted the appellant leave to appeal against sentence only as the respondent had no
60 objection. This appeal therefore, is only in respect of sentence.

Counsel submitted that a sentence of 15 years for aggravated robbery was harsh and manifestly excessive. He argued that although violence was used in this case, there was no loss of life.
65 Further that the appellants were first offenders and were both remorseful.

Further that both appellants were young and capable of reform. Counsel relied on **Adama Jino Vs Uganda Court of Appeal**
70 **Criminal Appeal No. 50 of 2006** in which this Court reduced to 15 years a sentence of the appellant who had been convicted of aggravated robbery and sentenced to life imprisonment. Counsel submitted that there existed more aggravating factors in that case than in this appeal.

75 Counsel also relied on **Pte Kusemererwa and another Vs Uganda, Court of Appeal at Fort Portal Criminal Appeal No. 83 of 2010**, where this Court reduced the sentence from 20 years to 13 years for aggravated robbery in which sh. 2 million was stolen
80 and never recovered. Counsel asked Court to reduce the sentence to 13 years imprisonment in this appeal.

The Respondent's Case.

Ms. Amumpaire for the respondent opposed the appeal and
85 supported the sentence. She described the injuries inflicted on the

victim as grave. The victim was hacked with a panga during the robbery and she sustained serious injuries on several parts of her body. The medical report that was tendered in Court described the injuries as grievous harm.

90 Counsel submitted that the 1st appellant was a son of the victim, which she contended was an aggravating factor. The learned trial Judge, counsel submitted, took into account the period of three years the appellants had spent on remand, the fact that they were
95 young and were first offenders. She cited **Kutegana Steven Vs Uganda Supreme Court Criminal Appeal No. 53 of 2000** in which a death penalty for aggravated robbery was upheld.

She also relied on **Mutabingwa James Vs Uganda Court of
100 Appeal Criminal Appeal No. 57 of 2011**, in which this Court confirmed an 18 year sentence for aggravated robbery. In that case, counsel submitted Court considered the fact that the maximum sentence for robbery is death. Counsel asked Court to confirm the sentence of 15 years imprisonment.

105 **Resolution of Ground of Appeal**

We have carefully listened to both Counsel. We have also perused the Court record and the authorities cited to us.

110 We are mindful of the duty of this Court as a first appellate Court.
We are alive to the law that requires us to re-appraise the evidence
and to come up with our own inferences on all issues of law and
facts. See **Rule 30(1)(a) of the Rules of this Court, Bogere
Moses Vs Uganda, Supreme Court Criminal Appeal No. 1/1997,**
115 **Kifamunte Henry Vs Uganda Supreme Court Criminal Appeal
No. 10/1997** and a host of other decisions of the Supreme Court
and this Court.

Although this Court has the powers to interfere with a sentence
120 imposed by the lower Court, the instances in which it may do so
are limited.

The limitations have been discussed in a number of authorities of
the Supreme Court and this Court. They were well set out by the
125 Supreme Court in **Kiwalabye Bernard Vs Uganda Supreme
Court Criminal Appeal No. 143/2001** as follows;

130 *"The appellate Court is not to interfere with sentence
imposed by a trial court which has exercised its discretion
on sentence unless the exercise of the discretion is such
that it results in the sentence imposed to be manifestly
excessive or so low as to amount to a miscarriage of
justice or where a trial court ignored to consider an
important matter or circumstances which ought to be*

considered when passing the sentence or where the sentence imposed is wrong in principle."

In this case, the appellant contends that the learned trial Judge imposed a sentence of 15 years imprisonment upon each of the appellants which sentence was harsh and manifestly excessive, in the circumstances of the case.

The circumstances of this case were that the appellants attacked an old woman, the mother of the 1st appellant at night. She was defenceless. They hacked her with a panga inflicting several cuts on vital parts of her body. She was lucky to have survived as she was rushed to hospital that night. They robbed from her shs. 65,000/- (sixty five thousand shillings) which was never recovered.

The Judge before passing sentence took into account the following mitigating factors:-

The appellants were first offenders and therefore capable of reform. There was no loss of life. They had each spent on remand a period of 3 years. He also took into account the aggravating factors already set out above.

This Court in **Rutabingwa James Vs Uganda Court of Appeal Criminal Appeal No. 57 of 2011**, confirmed an 18 year sentence

160 for aggravated robbery. While confirming that sentence, this Court noted that the appellant in that case had spent close to 5 years on remand. It also considered the injuries inflicted upon the victim.

This Court, in **Adama Jino Vs Uganda, Criminal Appeal No. 50**
165 **of 2006** at Gulu, reduced the sentence from death to 15 years imprisonment. In that case, this Court took into account the period of 3 years and 2 months the appellant had spent on remand, the fact that there had been no loss of life and the fact that the appellant appeared repentant.

170 In Pte **Kusemererwa and Tusiime Moses Vs Uganda Court of Appeal Criminal Appeal No. 83 of 2010** at Fort portal, this Court reduced the sentence from 20 years to 13 years for aggravated robbery. In **Ouke Sam Vs Uganda Court of Appeal Criminal**
175 **Appeal No. 251/2002**, this Court confirmed a 9 year sentence for aggravated robbery.

We have taken into account all the mitigating and aggravating factors in this case. We find that the learned trial Judge properly
180 and carefully took into account all of them before pronouncing the sentence.



We have found no reason to interfere with the sentence of 15
years imprisonment for each of the appellants which is hereby
185 confirmed.

In the result, the appeal is dismissed as it has no merit.

DATED AT MBARARA THIS ^{26th} DAY OF OCTOBER 2016.

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**HON. JUSTICE KENNETH KAKURU,
JUSTICE OF APPEAL**

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**HON. JUSTICE BYABAKAMA MUGENYI SIMON
JUSTICE OF APPEAL**

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**HON. JUSTICE ALFONSE C. OWINY-DOLLO
JUSTICE OF APPEAL**