

The evidence against the appellants in the High Court was that on the 1st of July 1993, Corporal Odikir Pampylio, (PW5), wardress Beatrice Bagenda, (PW4), wardress Chadiru and the deceased, corporal Charles Nangosya, were detailed to escort twenty two prisoners to Mbale Chief Magistrate's Court under the overall charge of Chief Warden Grade II, Silver Omaswa, (PW2). The two appellants were among the prisoners who were taken to court. After court, the warders, wardresses and the prisoners started their return journey to prison on foot. The prisoners were handcuffed except women prisoners and the 1st appellant who had pleaded with the warders that because of his alleged bad leg, he should not be handcuffed with the rest of the prisoners. As the group of prisoners and prison officers reached Malukhu Primary School, the sandals of the 1st appellant allegedly came off with him claiming that they needed repair. Omaswa instructed Corporal Odikir to wait on the 1st appellant as he proceeded on the task of mending the sandals. The rest of the group continued on their journey. Shortly afterwards, Omaswa heard someone calling "Mukibi, Mukibi" and when he turned round to see what was happening, he noticed that the 1st appellant had overpowered Corporal Odikir and taken the corporal's gun into his own possession. Omaswa ordered Corporal Nangosya to disarm the 1st appellant but when Corporal Nangosya cocked his gun, it jammed. The 1st appellant threw the gun he had grabbed from Corporal Odikir to the

Penal Code Act. He was convicted as charged but sentence was deferred. The appellants appealed to the Court of Appeal which dismissed the appeal and confirmed both the convictions and sentences. The appellants appealed to this court and, having heard the appeal, we dismissed it on 12/06/2000, and intimated that we would give our reasons for the dismissal which we now do.

2nd appellant who cocked it and shot Corporal Nangosya with it. The victim was rushed to hospital where he died a few hours after admission. A few minutes after the shooting incident, the District Medical Officer of Mbale, Dr. Richard Othieno, PW1, arrived at the scene in his official motorcar, UM 1004 Suzuki. He was stopped at gunpoint by the 2nd appellant and forced out of the vehicle. The 2nd appellant grabbed the car key from Dr. Othieno, got into the car with two of the other prisoners and drove off. Thereafter, Omaswa who had sought refuge in the Primary School, came out of hiding, rounded up the remaining prisoners and returned them to prison. The doctor's vehicle was recovered later and two guns were found in it. Medical evidence showed that the cause of death of Corporal Nangosya was severe haemorrhage and shock caused by a shot-gun. The appellants were arrested at different places and times and charged with the offences.

In his defence, the 2nd appellant testified that on the return journey to prison, he was handcuffed alone and that he was unable to say whether the 1st appellant was amongst the prisoners since he did not know of this fact. He only came to know of the 1st appellant on the 25/11/95 when he was informed of the details of the case. He denied all the facts disclosed by the prosecution witnesses with regard to the gun and the fatal shooting of the victim. He also denied knowing anything about the robbery of Dr. Othieno's vehicle and the guns which were found in it. He only admitted to having escaped in the confusion that followed the scuffle. The 1st appellant made an unsworn statement and said that, while being escorted to prison with the other prisoners, he and Odikir had a scuffle over some money given for the appellant by a relative but retained by Odikir. During the scuffle, Odikir threw his gun to Omaswa whom he ordered to shoot the 1st appellant, but Omaswa did not do so.

Odikir then demanded to have the gun back so that he could personally shoot the 1st appellant. The 1st appellant then ran away and hid in a millet field to save his life. It was during the time when he was in the millet field that he heard a gun shot. He subsequently escaped and was at large till the 25th November, 1995, when he was arrested in Uganda House, Kampala, where he had gone to meet a relative. Later he was charged with the murder about which he knew nothing.

The learned trial judge accepted the prosecution evidence and found both appellants guilty of murder of Corporal warder Charles Nangosya. He also found the 2nd appellant guilty of aggravated robbery. The two appellants were sentenced to death for murder. They appealed to the Court of Appeal on the ground that the trial judge had wrongly evaluated the evidence and came to an erroneous decision. The Justices of Appeal dismissed the appeal and confirmed both the convictions and sentences imposed by the learned trial judge.

Before us, Mr. Muguluma represented the 1st appellant, Wetuse Masette, and Ms. Diana Musoke represented the 2nd appellant, William Mukitibi. Each appellant filed a separate Memorandum of Appeal with more or less similar grounds except that the 2nd appellant's Memorandum of Appeal contained an extra ground, namely that the courts below erred in convicting him of aggravated robbery. For the 1st appellant, Mr. Muguluma contended that the conviction of his client was based mainly on the evidence of Omaswa and wardress Bagenda, while the evidence of the appellant himself was not evaluated. In any event, the Justices of Appeal failed to re-evaluate all the evidence or did so inadequately. He submitted that in failing to re-evaluate the evidence as

required by law, the Justices of Appeal were in error and this was one of those cases in which this court should itself re-evaluate the evidence. Ms. Musoke, learned counsel, for the 2nd appellant, also contended that the Justices of Appeal had failed to re-evaluate the evidence which influenced the trial judge to convict and sentence the 2nd appellant.

Counsel further contended that the evidence given by wardress Bagenda could not have corroborated the evidence of robbery and that, without corroboration, the 2nd appellant should have been acquitted. Ms. Musoke further submitted that no common intention had been established by the prosecution. Moreover, the testimony of the appellant in his own defence that he had been handcuffed at all times was not contradicted. It was therefore counsel's contention that the 2nd appellant should have been believed and acquitted.

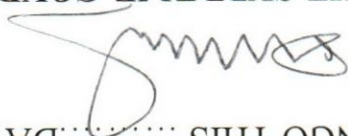
For the State, Mr. Okwanga, Senior State Attorney, supported both the convictions and sentences of the appellants. He submitted that the evidence on record was sufficient to support the convictions and also showed that the Justices of Appeal properly re-evaluated that evidence before confirming the findings and decisions of the trial court. It was Mr. Okwanga's further contention that there was overwhelming evidence to support the offence of murder against both appellants and of aggravated robbery against the 2nd appellant.

Having perused the records of proceedings in this appeal, and heard counsel's submissions on behalf of the appellants and, considered the law applicable, we were satisfied that there was no merit in the appeal. The trial judge and the Court of Appeal believed the eye witnesses, Omaswa, (PW2) and wardress Bagenda (PW4). The incidents occurred at

lunchtime during broad daytime. Appellants admitted being on the scene during the commission of the offences. The issue was really one of credibility of witnesses. We were not persuaded by either counsel for the appellants that either court erred in believing and relying on the evidence of witnesses. We were also satisfied that the learned Justices of Appeal sufficiently re-evaluated the evidence. For these reasons we decided to dismiss the appeal.

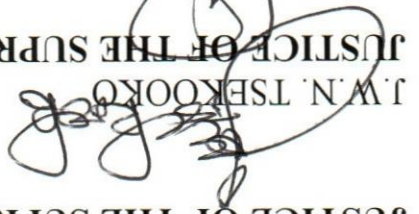
DATED AT MENGO THIS 14th DAY OF August 2000

A.H.O. ODER



JUSTICE OF THE SUPREME COURT

J.W.N. TSEKOOKO



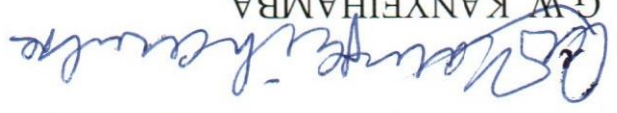
JUSTICE OF THE SUPREME COURT

J.N. MULENGA



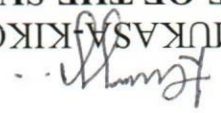
JUSTICE OF THE SUPREME COURT

G.W. KANYEIHAMBA



JUSTICE OF THE SUPREME COURT

L.E.M. MUKASA KIKONYOGO



JUSTICE OF THE SUPREME COURT