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**THE REPUBLIC OF UGANDA**

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

**CRIMINAL APPEAL NO.285 OF 2021**

*(Arising from High Court Criminal Case No.41 of 2018)*

**MUKASA RONALD alias MADU:::APPELLANT**

10

**VERSUS**

**UGANDA:::RESPONDENT**

*(An appeal from the decision of the High Court of Uganda at Mukono before P. Basaza Wasswa, J delivered on 20<sup>th</sup> November, 2019)*

**CORAM: HON. MR. JUSTICE CHEBORION BARISHAKI, JA**

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**HON. LADY JUSTICE HELLEN OBURA, JA**

**HON. LADY JUSTICE EVA. K. LUSWATA, JA**

**JUDGMENT OF THE COURT**

The appellant upon his own plea of guilty was on 20<sup>th</sup> November, 2019 convicted of the offence of aggravated robbery contrary to sections 285 and 286 of the Penal Code Act, Cap 120 and sentenced to 10 years' imprisonment. The conviction and sentence followed a plea bargain agreement the parties entered into.

The background to this appeal is that the appellant, Mukasa Ronald alias Madu was indicted for the offence of aggravated robbery contrary to sections 285 and

5 286 of the Penal Code Act, Cap 120. The particulars of the offence were that on  
the 8<sup>th</sup> day of December, 2017 at Lusenke Village in Kayunga District, the  
appellant robbed Yeeka Godfrey of cash UGX 200,000/= and at or immediately  
before or immediately after the said robbery used a deadly weapon to wit a knife  
to the said Yeeka Godfrey. At the commencement of the trial, the prosecution,  
10 the appellant and his counsel executed a plea bargain agreement on 11<sup>th</sup>  
November, 2019 and an addendum thereto was executed on 20<sup>th</sup> November,  
2019. In the said plea bargain agreement, it was agreed that the appellant be  
sentenced to 10 years' imprisonment for the offence of aggravated robbery.

Being aggrieved with the sentence, the appellant with leave of this Court,  
15 appealed against sentence only on the following ground.

***That the learned trial Judge erred in law when she sentenced the  
appellant to 10 years' imprisonment without considering the time  
spent on remand which was harsh and excessive leading to a  
miscarriage of justice.***

## 20 **Representation**

At the hearing of the appeal Mr. Richard Kumbuga appeared for the appellant  
on state brief while the respondent was represented by Mr. Sam Oola, Senior  
Assistant DPP.

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5 **Appellant's submissions**

Counsel for the appellant submitted that the Learned Trial Judge did not consider the period of time that the appellant had spent on remand and other mitigating factors. He further submitted that the appellant was 29 years of age at the he committed the offence and by the time of his conviction, he was aged  
10 32 years and capable of reforming. That the appellant had been remorseful from the time he was apprehended, pleaded guilty and thereby did not waste Court's time and has been of good conduct for the period he was in custody. Counsel added that it was an established practice that where an accused person pleads guilty to a charge, the trial Court ought to exercise leniency in sentencing such  
15 a person as this encourages other criminals to own up to their criminal responsibility.

Counsel contended that the circumstances under which this offence was committed should also have been considered by the learned trial Judge. The appellant merely grabbed the victim and stole his property. It was at the point of  
20 escape that the victim held his legs and the convict fought back by stabbing him. He added that the convict though armed, was well calculative not to inflict life threatening injuries to the victim despite having the means to do so. In counsel's view, this was a conduct of a person with some moral conscience. Counsel further contended that the appellant was a first offender and a sole bread winner  
25 for his family by the time of his conviction.



5 Counsel submitted that the learned trial Judge did not adequately consider the  
appellant's mitigating factors compared to the aggravating factors hence meting  
out a harsh and excessive sentence to the appellant. He added that the learned  
trial Judge did not as required by law deduct the period that the appellant had  
spent on remand as required by article 23(8) of the Constitution. Further that  
10 the appellant was convicted and sentenced on 22<sup>nd</sup> December, 2020 for a period  
of 10 years and he had been on remand for 3 years, 8 months and 21 days. (We  
believe this was an error because the actual period is 1 year 10 months and 18  
days). He prayed that the appeal be allowed.

#### **Respondent's submissions**

15 Counsel for the respondent conceded that in imposing the sentence of 10 years'  
imprisonment for aggravated robbery, the learned trial Judge did not take into  
account the period that the appellant had spent on remand contrary to the  
provisions of Article 23(8) of the Constitution. He invited this Court to set aside  
the sentence of 10 years' imprisonment passed against the appellant and  
20 proposed a sentence of 8 years, 1 month and 15 days' imprisonment. He relied  
on ***Rwabugande Moses V Uganda, Supreme Court Criminal Appeal No.25 of  
2014*** for the principle that a sentence arrived at without taking into  
consideration the period spent on remand was illegal.

#### **Court's Determination**

25 We have carefully studied the Court Record, the submissions of either counsel  
for parties. We have also reviewed the law and authorities relied upon.

5 Our duty as the first appellate Court is to re-appraise the evidence and come up with our own inferences on all questions of law and fact. See **Rule 30(1) of the Rules of this Court** and **Kifamunte Henry V Uganda, Supreme Court Criminal Appeal No.10 of 1997.**

This Court can only interfere with the sentence of the trial Court if that sentence  
10 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 V Uganda, Criminal Appeal No.24 of 2001** and **Ogalo s/o Owuora V Republic (1954) 21 EACA 126.**

Counsel for the appellant contends that while passing the sentence, the learned  
15 trial Judge did not comply with the provisions of Article 23(8) of the Constitution, rendering the sentence a nullity. In reply, counsel for the respondent conceded that indeed the learned trial Judge did not comply with the provisions of Article 23(8) of the Constitution.

We note that in the instant case, the appellant went through a plea bargaining  
20 process at the High Court. He bargained for a sentence of 10 years himself. On that basis, he pleaded guilty to the offence of aggravated robbery. We further note that at page 10 of the Plea Bargain Agreement, there are words written as “sentence includes period spent on remand.”

Plea Bargaining is regulated by the Judicature (Plea Bargain) rules, 2016.

25 Rule 4 of the Judicature (Plea Bargain) Rules, 2016, subjects conclusions reached by the parties in the plea bargaining process to approval by Court.

5 Rule 8(2) provides that parties shall inform Court of the ongoing plea bargain negotiations and shall consult the Court on its recommendations with regard to possible sentence before the agreement is brought to Court for approval and recording.

According to the findings and order of Court on record, the learned trial Judge  
10 stated as follows;

*“The Court, having reviewed this form and any addenda, and having questioned the accused concerning the accused’s constitutional rights, finds that the accused has expressly, knowingly, understandingly, and intelligently waived and given up his or her constitutional and statutory  
15 rights. The Court finds that the accused’s plea(s) and admission(s) are freely and voluntarily made with an understanding of the nature and consequences thereof, that any allegations as indicated in this form are true, and that there is a factual basis for the plea(s) and admission(s). The Court accepts the accused’s plea(s). The Court orders that this form be filed and  
20 incorporated in the record of proceedings.”*

We are of the considered view that a sentence that follows a plea bargain procedure ought to be interfered with if it is shown that it was illegal. In the instant case, the record of proceedings does not indicate anywhere that the learned trial Judge complied with the provisions of **Article 23(8) of the  
25 Constitution** however much the sentence arose out of a plea bargaining agreement.



5 The record does not show that the parties consulted Court on the  
recommendations before the agreement was brought to Court for approval and  
recording as required under Rule 8 (2) of the Plea bargain rules. It is during this  
time that the trial Judge guides the parties on matters of law which include the  
period a convict spent on remand and all other issues that may not have been  
10 considered by the parties during negotiations. Before endorsing the agreement,  
court must satisfy itself that matters of law and fact have all been taken into  
consideration by the parties. See **Wetya Twayiru & Onyango Peter V Uganda,  
Court of Appeal Criminal Appeal No.532 of 2016.**

**Article 23(8) of the Constitution** provides that; where a person is convicted  
15 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.

In **Rwabugande Moses vs Uganda Supreme Court Criminal Appeal NO.25 of  
2014** a sentence of imprisonment arrived at without taking into consideration  
20 the period spent on remand by a convict is illegal for failure to comply with a  
mandatory constitutional provision.

The appellant was arrested and detained on 2/01/2018. He was subsequently  
convicted on 20/11/2019. The period he spent on remand was therefore 1 year  
10 months and 18 days. The learned trial Judge did not consider that period  
25 when he was sentencing the appellant. The sentence imposed was therefore a  
nullity and we accordingly set aside the same. Section 11 of the Judicature Act,  
Cap 13 grants this Court while hearing an appeal the same power as that of the

5 trial Court to impose a sentence that we consider appropriate in the  
circumstances. The facts admitted by the appellant are that during the robbery  
he grabbed the complainant by the collar, threw him down, and quickly picked  
the complainant's keys and cash of 200,000/= from his pockets. As the appellant  
was attempting to run away, the complainant grabbed his leg and struggled with  
10 him to get his money back. The appellant got a knife from his waist and stabbed  
the complainant on his left arm. However, we note that the appellant was a first  
offender, he was 29 years old at the time he committed the offence, and he  
pleaded guilty hence saving Court's time and was remorseful.

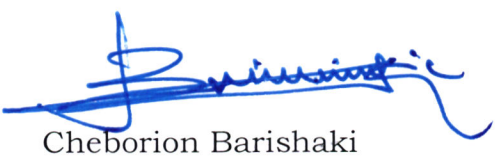
In **Africa Wycliffe and Magabali Ismail alias Jose V Uganda, Court of Appeal**  
15 **Criminal Appeal No. 522 of 2016**, the appellant and the respondent executed  
a plea bargain agreement in which they agreed on a sentence of 18 years'  
imprisonment. On the basis of that agreement the appellant pleaded guilty and  
he was convicted of the offence of Aggravated Robbery and the learned trial Judge  
sentenced him to 18 years' imprisonment inclusive of the period spent on  
20 remand. This Court set aside the sentence of 18 years' imprisonment for being  
illegal as Article 23 (8) of the Constitution was not complied with and substituted  
it with a sentence of 13 years and 6 months' imprisonment after deducting the  
period of 5 years and 6 months the appellant spent on remand.

After considering both the aggravating and mitigating factors and deducting the  
25 period of 1 year, 10 months and 18 days that the appellant in the instant case  
spent on remand from the agreed 10 years, we now sentence the appellant to 8  
years, 1 month and 12 days. The said sentence shall run from 20<sup>th</sup> November,  
2019 when the appellant was sentenced.

We so order.



5 Dated at Kampala this .....<sup>9th</sup>.....day of .....<sup>Nov</sup>.....2023



Cheborion Barishaki

**JUSTICE OF APPEAL**

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Hellen Obura

**JUSTICE OF APPEAL**



Eva. K. Luswata

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**JUSTICE OF APPEAL**

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