

**THE REPUBLIC OF UGANDA**  
**IN THE COURT OF APPEAL OF UGANDA AT MASAKA**  
**CRIMINAL APPEAL NO. 0204 OF 2016**

*(Coram: R. Buteera, DCJ; C. Bamugemereire & E. Luswata, JJA)*

5 **SULAIT MUWEESI ::: APPELLANT**

**VERSUS**

**UGANDA ::: RESPONDENT**

*(Appeal against the decision of the High Court of Uganda at Masaka, John Eudes Keitirima, J, dated 30/06/2016 in Criminal Case No. 003 of 2016)*

10 **JUDGMENT OF THE COURT**

**INTRODUCTION**

The appellant was convicted of the offence of Aggravated Robbery contrary to **Sections 285 and 286 (2) of the Penal Code Act, Cap 120**, and sentenced to 10 years' imprisonment. He was also convicted of Murder contrary to  
15 **Sections 188 and 189 of the PCA** and sentenced to 20 years' imprisonment.

**Brief Facts**

It is the prosecution's case that on 23<sup>rd</sup> /07/2015, one Gumisiriza Mark went to the deceased's home to get a machine to dig holes for his fence. The deceased's cows were still in the Kraal during the day. On opening the door,  
20 he found the deceased body lying in the sitting room with a wound on the head. He ran out and informed other people who also came to the scene.

Kawuki Bashir gave the deceased UGX 600,000 in the presence of the appellant. However, on the day when the deceased's body was discovered in the living room, the appellant was not found at home. He disappeared from  
25 the village until 19<sup>th</sup>/08/2015 when he was arrested from Nyendo Trading Centre and taken to Bukomansimbi Police Station.

On 20<sup>th</sup>/08/2015 the appellant recorded a Charge and Caution statement at Bukomansimbi Police Station. He admitted to having murdered the deceased

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by hitting her on the head with a hoe in order to steal the money which she had tied on her belt. He admitted to having stolen the money after murdering the deceased.

5 On 24<sup>th</sup> /07/2015, a post - mortem was carried out on the deceased and it showed that the deceased had a scalp wound at occiput measuring 3 by 4cm, occipital fracture and the cause of the death was a severe head injury.

On 25<sup>th</sup>/08/2015 the medical report revealed that the appellant was of normal mental state.

10 The High Court tried and convicted him of Aggravated Robbery and Murder and duly sentenced to 10 years' and 20 years' imprisonment, respectively, hence this appeal.

### **Ground of Appeal**

15 That the learned trial Judge erred in law and fact when he passed an illegal sentence without considering the remand period of the appellant while attending trial.

### **Representation**

At the hearing of the Appeal, the appellant was represented by Mr. Joseph Wasswa, on state brief, while the respondent was represented Mr. Simon Peter Ssemalemba, Assistant Director of Public Prosecutions.

### **20 Case for the appellant**

Counsel argued that the sentences passed by the learned trial Judge were illegal for not considering the period that the appellant had spent on remand. He submitted that the trial Court did not consider the 10 months that the appellant had spent on remand.

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### **Case for the respondent**

Counsel conceded that the sentence passed against the appellant did not consider the period that he had spent on remand.

5 He cited **Mutebi Ronald v Uganda; Criminal Appeal No. 0383 of 2019** where the case of **Rwabugande Moses v Uganda; SC Criminal Appeal No. 20 of 2014**, was cited with approval. This Court held, inter alia, that any sentence passed without taking into consideration the period spent on remand is illegal and contravenes the provisions of **Article 23 (8)** of the Constitution.

10 He thus prayed that Court invokes its powers under Section 11 of the Judicature Act and deduct the 11 months, being the period spent o remand by the appellant from the sentences of 10 years and 20 years' respectively.

### **Court's consideration**

15 The duty of this court as a first appellate court was laid out in **Kifamunte Henry v Uganda; S. C. Criminal Appeal No. 10 of 1997**, where the Supreme Court stated:

**“The first appellate court has a duty to review the evidence of the case, to reconsider the materials before the trial judge and make up its own mind not disregarding the judgment appealed from but carefully weighing and considering it.”**

20 In **Rwabugande Moses v Uganda; S.C. Criminal Appeal No. 25 of 2014**, the Supreme Court high-lighted the duty of the first appellate court as follows:

25 **“It is trite law that the duty of a first appellate court is to reconsider all material evidence that was before the trial court, and while making allowance for the fact that it has neither seen nor heard the witnesses, to come to its own conclusion on that evidence. In so doing, the first appellate court must consider the evidence on any issue in its totality**

**and not any piece thereof in isolation. It is only through such re-evaluation that it can reach its own conclusion, as distinct from merely endorsing the conclusion of the trial court. [Baguma Fred vs. Uganda SCCA NO.7 of 2004]”**

5 Counsel for the appellant challenges the sentence that was meted against the appellant for being illegal since the trial Judge did not deduct the period that the appellant had spent on remand.

In sentencing the appellant, the learned trial Judge stated:

10 *‘Court: I have heard both the mitigating and aggravating factors. I also consider the fact that the convict has pleaded guilty and hence not wasted court's time. However his actions call for a deterrence. He will be sentenced to 10 years imprisonment on count 1. He will also be sentenced to 20 years imprisonment on*  
15 *count 2 the sentences to run concurrently. The convict has a right of appeal against the sentence.’ (Sic)*

From the above excerpt, it is evident that the learned trial Judge did not consider the period that the appellant had spent on remand. That alone renders the sentence illegal for contravening the provisions under **Article 23 (8)** of the Constitution. It is accordingly set aside for that reason.

20 This is one of the instances under which this Court may exercise its powers under Section 11 of the Judicature Act, and sentence the appellant afresh. The appellant was sentenced to 20 years’ imprisonment. He had spent 11 months on remand.

25 We shall now proceed to sentence the appellant afresh. In respect to the first count, we sentence the appellant to ten years’ imprisonment, from which we deduct the 11 months spent on remand. He shall serve 9 years and one-month imprisonment. On the second count of murder, we sentence the appellant to twenty years’ imprisonment. We deduct the 11 months spent on remand. he shall accordingly serve 19 years and one-month imprisonment. These

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sentences shall run concurrently with effect from the date of conviction which is 30/ 06/ 2016.

We so order.

5 Dated at Masaka this 12 day of June 2023

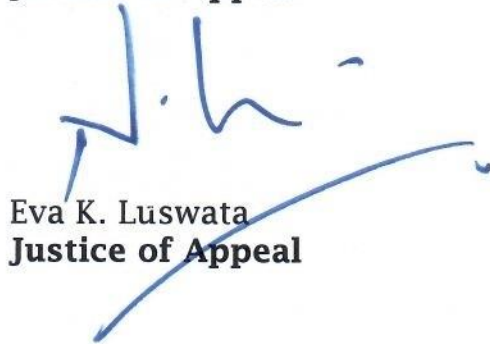
  
Richard Buteera  
Deputy Chief Justice

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15 Catherine Bamugemereire  
Justice of Appeal

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Eva K. Luswata  
Justice of Appeal

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