

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT MASAKA
CRIMINAL APPEAL NO. 129 OF 2013

(CORAM: F.M.S Egonda-Ntende, JA, Hellen Obura, JA and Stephen Musota, JA)

10 **OKULU JIMMY :::APPELLANT**

VERSUS

15 **UGANDA :::RESPONDENT**

(Appeal from the decision of Hon. Lady Justice Margaret C. Oguli holden at Masaka High Court in Criminal Session Case No.129 of 2013 delivered on 10/09/2013)

JUDGMENT OF THE COURT

20 This appeal is against the sentence only imposed by the High Court at Masaka (Oguli, J) on 9/9/2013 wherein the appellant was convicted on his own plea of guilty of the offence of aggravated robbery and sentenced to 15 years imprisonment.

25 The brief facts are that the appellant was a former employee of Securiko Uganda Limited and was assigned to guard Busiro Enterprises Ltd. On the 19/01/2013 at around 8:00 am, the appellant escorted Olore George, Adola and Godfrey to distribute beers they had loaded on a Fuso Truck Reg. UAM 705T for sale in Kyanamukaka, Kyesiga and Dimo Landing sites. On their way back, along Namajuzi in Masaka swamp-Kyotera Road, Olore who was driving
30 heard a crate falling from behind and stopped to find out what could have happened. As he stepped out of the truck, he found the appellant already off the fuso truck. Immediately the appellant put him on gun point and demanded for all the money made out of the total sales on that day or he shoots him dead.

5 The appellant was given all the monies amounting to Shs.13,505,000/- and Shs. 15,000,000/- and then he ordered them to drive off leaving him (appellant) at the scene. The matter was reported to police, a search for the appellant ensued but he was not traced until on 3rd April 2013 when he was arrested from his home village at Akrach in Otuke District. An SLR Rifle No. 22016939 was recovered with no ammunition.

10 The appellant pleaded guilty to the offence and was convicted on his own plea and sentenced to 15 years imprisonment. Being dissatisfied with the decision of the learned trial Judge, he appealed to this Court on sentence only on the ground that;

“The learned trial Judge erred both in fact and law when he sentenced the appellant to 15 years imprisonment which was harsh according to the circumstances.”

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Representations

At the hearing of this appeal, Ms. Kentaro Specioza represented the appellant on state brief while Mr. David Baxter Bakibinga Senior State Attorney from the Office of the Director Public Prosecutions represented the respondent.

20 At the commencement of the hearing, counsel for the appellant sought leave to appeal against sentence only which was granted. She submitted that the appellant pleaded guilty to the offence and invited this Court to re-consider the mitigating factors presented for the appellant. She contended that although the appellant had a heavy weapon (a gun), no physical injury was caused to anyone and that the psychological
25 injury which was suffered by the victims is very easy to heal. She prayed that the sentence be reduced to 10 years imprisonment. Counsel also submitted that the trial Judge did not consider the period the appellant spent on remand while passing sentence as required under Article 23 (8) of the Constitution. She argued that this makes the sentence a nullity.

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5 Counsel for the respondent conceded that the sentence was a nullity for not complying with Article 23(8) of the Constitution. He invited court to consider both the aggravating and mitigating factors and impose an appropriate sentence.

Court's consideration

10 We have carefully perused the court record and considered the submissions of both learned counsel. It has been conceded by counsel for the respondent that the learned trial Judge did not take into account the provision of Article 23 (8) of the Constitution while passing the sentence. The Article provides as follows;

15 *"Where a person is convicted 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."*

While sentencing the appellant, the trial Judge stated thus;

20 *"The accused pleaded guilty at the earliest opportunity so he saved court's time and resources. The convict appeared remorseful and regretted having committed the offence. He has an aging grandmother and six siblings to take care of and has promised not to do it again. Nonetheless, the offence, with which he is convicted of, carries a maximum sentence of death. It was committed by the convict, who had been engaged to provide security to his employers but breached their trust and not only betraying their trust but also causing financial loss to the company, which procured his employment so that he could look after his family. In view of the above, court sentences him to (fifteen) 15 years imprisonment. He has right*

25 *to appeal against sentence. He has to compensate the Ug. Shs. 13,505,500"*

We note that the learned trial Judge did not take into consideration the period the appellant had spent in lawful custody as required under Article 23 (8) of the Constitution. The Supreme Court in ***Rwabugande Moses vs Uganda, SCCA No. 25 of 2014***, held that failure to take into account the period a convict has spent on remand renders the sentence illegal.

30 We therefore find that the sentence of 15 years imposed upon the appellant was illegal. We invoke the provisions of ***section 11 of the Judicature Act*** which gives this Court the powers,

5 authority and jurisdiction as that of the trial court to impose an appropriate sentence of its own. In so doing, we shall consider the aggravating factors and the mitigating factors presented on court record as well as the range of sentences in similar cases.

The mitigating factors presented were that; the convict pleaded guilty and saved court's time. He regrets that he was involved in such acts. He promises not to commit such acts again. It is the sales man who brought in the idea of stealing. at the eve, he had a sick grandmother in
10 Otuke and he stole to save her life. He has no parents and he has 6 siblings, a wife and a 9 months old girl whom he is personally responsible for. He wants to regain the land on which his family was displaced during the war. He is on ARV's and has been on remand for 5 months. A lenient sentence was prayed for. On the aggravating side, it was presented that
15 the appellant was a security guard who was in charge of providing security for the people he escorted to sell the merchandise first but instead he turned on them and became a robber. The 13 million shillings has never been recovered to date. He betrayed the trust of offering security which caused financial loss to the company. A sentence commensurate to the offence was prayed for.

20 As regards the range of sentences courts have imposed in cases of a similar nature, in **Adama Jino vs Uganda, CACA No. 50 of 2006** this Court reduced the sentence imposed on the appellant for the offence of aggravated robbery from death to 15 years imprisonment. In so doing, this Court took into account the period of 3 years and 2 months the appellant had spent on remand and the fact that there had been no loss of life and the appellant appeared
25 repentant.

In **Pte Kusemererwa & anor vs Uganda, CACA No. 83 of 2010** the appellant was convicted of aggravated robbery of money worth Shs. 2 million which was never recovered and he was sentenced to 20 years imprisonment. On appeal, this Court reduced the sentence to 13 years imprisonment.

30 In **Ouke Sam vs Uganda, CACA No. 251/2002** this Court confirmed a sentence of 9 years

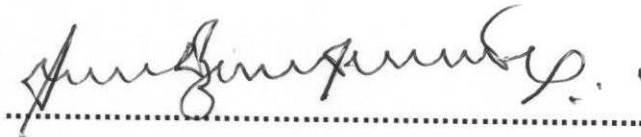
5 imprisonment for the offence of aggravated robbery.

In the circumstances, we are of the considered view that the ends of justice will be met by sentencing the appellant to 10 years imprisonment. In view of Article 23 (8) of the Constitution, we are enjoined to deduct the period of 5 months the appellant spent on remand. The appellant shall therefore serve a sentence of 9 years and 7 month imprisonment from the date
10 of conviction which is, 10/9/2013. The order for compensation of the victim of crime in the sum of Ug. Shs. 13,505,500/= is maintained pursuant to section 286 (4) of the Penal Code Act.

We so order.

Dated at **Masaka** this...^{30th}...day of...^{July}.....2018

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Hon. Justice F.M.S Egonda-Ntende

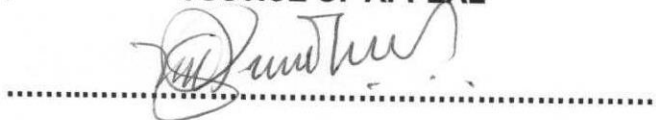
JUSTICE OF APPEAL



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Hon. Lady Justice Hellen Obura

JUSTICE OF APPEAL



Hon. Justice Stephen Musota

JUSTICE OF APPEAL