THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT JINJA
CRIMINAL APPEAL NO. 028 OF 2018

MULIKIRIZA BADRU::APPELLANT

VERSUS

UGANDA::RESPONDENT

(Appeal from the decision of the High Court of Uganda at Iganga before Elubu, J. delivered on 19th March, 2018 in Criminal Session Case No. 0180 of 2015)

CORAM: HON. LADY JUSTICE ELIZABETH MUSOKE, JA
HON. MR. JUSTICE CHEBORION BARISHAKI, JA
HON. LADY JUSTICE HELLEN OBURA, JA

JUDGMENT OF THE COURT

Background

On 19th September, 2018, the High Court (Elubu, J.) convicted the appellant of the offence of Aggravated Robbery contrary to **Sections 285 and 286 (2)** of the **Penal Code Act, Cap. 120**. On the same day, the High Court sentenced the appellant to 30 years and 6 months imprisonment.

The decision followed trial of the appellant and another person on an indictment which alleged that the two had, on 14th October, 2013 at Ndifakulya Village on Kisubi Road, Bugiri District, robbed Taabu Robert alias Osuku (the victim) of his Bajaj Motorcycle Registration No. UEB 392B and that, at or immediately before or immediately after the said robbery, the two had used a deadly weapon, to wit, a hammer on the victim. The other person tried alongside the appellant was acquitted.

The facts of the case may be summarized as follows. The victim was engaged in the boda boda business, and used to operate in Bugiri Town. At around 6pm to 7pm on 14th October, 2013, he was approached by the appellant to transport him to Ndifakulya Village, Kisubi Road about 1 ½ miles from Bugiri Town. The appellant was in the company of an unidentified lady. The victim agreed to do so, for a fare of Ug. Shs. 2,000/=.

Upon reaching their destination, the appellant gave the victim Ug. Shs. 10,000/=. The victim did not have Ug. Shs. 8,000/=, the expected balance, to return to the appellant after the fare had been deducted, so the two went to a nearby place to find change. They left the unidentified lady who travelled with them behind. The two could not find the change they went looking for, and decided to return to pick the unidentified lady. As they travelled back, the victim and the appellant met another person, and the appellant requested for the victim to carry the said person along on his motorcycle.

When the victim stopped to pick up the said person, he was assaulted by that person, with a club. The person hit the victim on the head and the shoulder. The appellant also joined in, to attack the victim, and grabbed hold of the victim, while the other assailant hit the victim with a hammer on the chest. The victim tried to fight off the assailants, but he was overpowered. The victim then raised an alarm, but it went unanswered. The assault continued, and subsequently, the victim lost consciousness, only to regain it 4 days later, to find that he was in a hospital receiving treatment for injuries he had sustained during the attack. The victim's motorcycle had been stolen.

The police were notified of the attack on the victim, and a police officer visited the victim at the hospital where he was receiving treatment. The victim told the police officer that he was able to identify the appellant, whom he had known before the incident, as one of the assailants. The victim was also able to pick out the appellant from an identification parade conducted subsequently.

While giving his defence, the appellant denied the offence and stated that he was elsewhere, attending his grandfather's burial on the fateful day. The learned trial Judge was, however, satisfied that the appellant was properly identified by the victim. He, therefore, convicted the appellant and thereafter sentenced him accordingly. The appellant now appeals against the decision of the learned trial Judge, on the following grounds:

"1. **The learned trial Judge erred in law and fact when he convicted the appellant on uncorroborated evidence full of inconsistencies of the prosecution leaving the testimony of the accused which was plausible.**

2. **The learned trial Judge erred in law and fact when he convicted the appellant without evidence of the investigating officer.**

3. **The learned trial Judge without prejudice to the former erred in law and fact when he passed a very harsh and excessive punishment to the appellant without considering other mitigating factors in favour of the appellant."**

The respondent opposed the appeal.

Representation

At the hearing, Mr. John Isabirye, learned Counsel on State Brief, appeared for the appellant. Ms. Fatina Nakafeero, a Chief State Attorney in the Office of the Director of Public Prosecutions, appeared for the respondent. The appellant connected to the hearing via Zoom Video Conferencing technology, while he remained at Jinja Government Prison, where he was incarcerated. This was to accommodate the prison regulations in place at the time, which restricted movement of inmates from prison as a measure to prevent contracting and spreading COVID-19 among prison inmates.

Written submissions filed by the parties prior to the hearing were adopted and relied on in support of the cases for both parties.

Appellant's submissions

Ground 1

The manner in which ground 1 was framed indicated that it related to the learned trial Judge's erroneous approach to alleged major inconsistencies in the prosecution evidence. The written submissions by counsel for the appellant, however, dealt with various other issues. First, counsel submitted that the learned trial Judge erred to base on uncorroborated prosecution evidence to convict the appellant. He specifically pointed to the evidence that there was an unidentified lady present when the appellant allegedly assaulted the victim, and submitted that that lady ought to have been called as a prosecution witness to corroborate the victim's evidence. Counsel contended that the trial Court ought to have drawn a negative inference from that failure, and found that the prosecution had not proved the case against the appellant. In counsel's view, all the other prosecution evidence did not prove that the appellant participated in commission of the offence.

The second issue handled by counsel under this ground was the alleged trial Court's error to disbelieve the appellant's alibi which had not been shaken at all, by the prosecution evidence. Counsel submitted that the learned trial Judge failed to fulfill the obligation as articulated in the authority of **Bogere Moses and Anor. vs. Uganda, Supreme Court Criminal Appeal No. 1 of 1997 (unreported)** to consider all the evidence before reaching his decision to reject the appellant's alibi. The appellant gave sworn evidence that on the fateful day, he had gone to attend his grandfather's funeral at a place far away from the scene of crime. Counsel contended that this plausible alibi did not receive due consideration from the learned trial Judge, and that consequently, the learned trial Judge failed to apply the principles on evaluation of alibi evidence as laid down in the **Bogere Moses case (supra),** and thus his decision to reject the appellant's alibi ought not to stand.

Counsel prayed this Court to allow ground 1 of the appeal.

Ground 2

Counsel submitted that the learned trial Judge erred to convict the appellant in the absence of police evidence on the circumstances of his arrest. The prosecution did not adduce evidence of any police officer to testify about the circumstances of the appellant's arrest, and no explanation was given for this omission. Counsel contended that the Supreme Court has held in the **Bogere Moses case (supra)** that a trial Court must draw an adverse inference from the prosecution's failure to adduce police evidence of the circumstances of an accused person's arrest. He prayed this Court to allow ground 2 of the appeal, as well.

Ground 3

This ground relates to the sentence that the trial Court imposed on the appellant, and was argued in the alternative, if this Court were to uphold the conviction of the appellant. Counsel relied on the authorities of **Kyalimpa Edward vs. Uganda, Supreme Court Criminal Appeal No. 10 of 1995 (unreported); Kamya Johnson vs. Uganda, Criminal Appeal No. 16 of 2000 (unreported); Kiwalabye Benard vs. Uganda, Supreme Court Criminal Appeal No. 143 of 2001** for the applicable principles to

justify an appellate Court to interfere with a sentence imposed by the trial Court.

Counsel asked this Court to infer from the sentence imposed that the trial Court omitted to consider the mitigating factors raised for the appellant. It was submitted that the appellant was a first offender, he was responsible for a family of 8 children and other dependent relatives. Counsel further submitted that the principle objective of sentencing is to ensure rehabilitation of an accused person, who will, after serving his/her sentence be reintegrated into society, as a better person. Counsel urged this Court to consider the said objective, and the circumstances of the case. The attack did not lead to death of the victim. The value of the motorcycle that was stolen from the victim, approximated to be less than Ug. Shs. 3,000,000/= was relatively low. The appellant had also raised several other mitigating factors.

In view of the above submissions, counsel prayed this Court to find that the sentence that the trial Court imposed on the appellant of 30 years and 6 months imprisonment was manifestly harsh and excessive and to set it aside. Counsel proposed to this Court to substitute in its place a sentence of 10 years imprisonment.

Respondent's submissions

Ground 1

With regard to the handling of the appellant's alibi defence, counsel for the respondent supported the learned trial Judge's decision to reject the alibi. She submitted that the victim had given cogent identification evidence that confirmed the appellant's participation in the commission of the offence. The victim had testified that on the fateful day, he had carried the appellant on his motorcycle, just before, the appellant with help from another person, assaulted him, left him unconscious and made off with the motorcycle. The victim stated that he had engaged in a fight with the appellant and another assailant but was subsequently overpowered and left unconscious. The prosecution evidence was credible and the learned trial Judge rightly relied on it to convict the appellant.

Counsel submitted that the learned trial Judge committed no legal error to believe the prosecution evidence over the appellant's evidence. This must have been due to the impressions that the respective witnesses had on the trial Judge. Counsel cited the authority of **Baguma Fred vs. Uganda, Supreme Court Criminal Appeal No. 007 of 2004**, for the proposition that if on appeal, a question arises as to which witnesses should be believed rather than another, and that question turns on manner and demeanour, the appellate court must be guided by the impression made on the trial judge who saw the witnesses. She submitted that the prosecution witnesses impressed the learned trial Judge as credible witnesses. The victim gave evidence that satisfied the principles on identification evidence as laid out in the **Bogere Moses case (supra)**. Moreover, alleging to have been at another place around the time of commission of the offence could mean that the appellant had committed the offence and then gone to that other place.

Counsel concluded by submitting that ground 1 of the appeal should fail.

Ground 2

Counsel submitted that the failure to call a police officer to testify about the circumstances of the arrest of the appellant was not prejudicial to the prosecution case. She relied on the authority of **Bogere Moses (supra)** where it was held that a trial Court retains the discretion to determine, on appraisal of the circumstances of the case, whether the evidence of circumstances of arrest of the accused person is essential to prove the charges in addition to the identification evidence. In the instant case, counsel submitted that the prosecution evidence was sufficient to prove the charges against the appellant and it was not fatal that the evidence of circumstances of arrest of the appellant was not adduced. Counsel submitted that ground 2 of the appeal, too, should fail.

Ground 3

Counsel supported the sentence that the trial Court imposed on the appellant. She submitted that the practice is that an appellate Court may only interfere with a sentence imposed by the trial Court in limited circumstances as articulated in the authorities of **Wamutabanawe Jamiru vs. Uganda, Supreme Court Criminal Appeal No. 74 of 2007 (unreported); Kyalimpa Edward (supra)**, among others. In the present

case, the trial Court considered the relevant mitigating factors raised for the appellant. The trial Court considered that the appellant was a first offender. He was responsible for a large family with a wife, 8 children and other dependent relatives. The trial Court had also considered the aggravating factors such as the serious and violent nature of the offence.

Counsel further submitted that under **Section 286 (2) of the Penal Code Act, Cap. 120**, the maximum sentence for aggravated robbery, of which the appellant was convicted is the death sentence. The **Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013** stipulate a starting point of 35 years imprisonment for sentencing for aggravated robbery. A lesser sentence of 30 years and 6 months imprisonment that was imposed on the appellant was therefore not harsh and excessive. Counsel referred to the case of **Otim Moses vs. Uganda, Supreme Court Criminal Appeal No. 06 of 2016** where the Supreme Court upheld a sentence of life imprisonment for aggravated robbery, and urged this Court to consider the authority and uphold the sentence imposed on the appellant.

Counsel submitted that ground 3 of the appeal should be disallowed.

In conclusion, counsel prayed this Court to dismiss the appeal and uphold the appellant's conviction and sentence.

Resolution of the appeal

We have carefully studied the Court Record, considered the submissions of counsel for both sides, and the law and authorities cited therein. We have also considered other relevant law and authorities that were not cited.

This is a first appeal from the decision reached by the High Court after trial of the appellant. On such a first appeal, this Court has a duty to reappraise the material on record, as presented before the trial Court, and thereafter, to come up with its own conclusions on all issues of law and fact. **(See: Rule 30 (1) (a) of the Judicature (Court of Appeal Rules) Directions, S.I 13-10; and the authority of Uganda vs. George Wilson Ssimbwa, Supreme Court Criminal Appeal No. 27 of 1995 (unreported)**.

We shall keep the above principles in mind as we resolve the grounds of appeal.

Ground 1

Ground 1, was formulated as follows: **"The learned trial Judge erred in law and fact when he convicted the appellant on uncorroborated evidence full of inconsistencies of prosecution, leaving the testimony of the accused which was plausible."** The ground, as framed, relates to two separate areas of objection to the learned trial Judge's decision, namely: 1) an error to convict the appellant on uncorroborated prosecution evidence, that was full of inconsistencies; 2) an error, to disregard the plausible alibi defence set up by the appellant, in reaching his decision. The manner that ground 1 was framed offends **Rule 66 (2)** of the **Judicature (Court of Appeal Rules) Directions, S.I 13-10**, which provides as follows:

> **"(2) The memorandum of appeal shall set forth concisely and under distinct heads numbered consecutively, without argument or narrative, the grounds of objection to the decision appealed against, specifying, in the case of a first appeal, the points of law or fact or mixed law and fact and, in the case of a second appeal, the points of law, or mixed law and fact, which are alleged to have been wrongly decided, and in a third appeal the matters of law of great public or general importance wrongly decided."**

The above cited provision of the Rules of this Court stipulates that each ground set out in a memorandum of appeal, must relate to one distinct issue or area of objection. In so far as ground 1 relates to more than one distinct issue or area of objection, it offends, the cited provision. We would have struck it out for being incompetent, however, we are of the view that that course would not be in the interests of justice. The memorandum of appeal was drafted by the appellant, himself, a lay man, and therefore we excuse the sloppy nature of its drafting. Further, the respondent was able to respond to the various issues argued in the appellant's submissions on ground 1. The issues that were raised are as follows: First, whether failure to call the unidentified lady who allegedly travelled with the appellant and the victim on the fateful day, was prejudicial to the prosecution case. Second, whether the learned trial judge erred to reject the appellant's alibi defence. We now turn to consider each issue below.

The first issue is whether failure to call the unidentified lady who allegedly travelled with the appellant and the victim on the fateful day, was prejudicial to the prosecution case. In **Kato John Kyambadde and Another vs. Uganda, Supreme Court Criminal Appeal No. 0030 of 2014 (unreported)**, it was stated:

> **"The law regarding the duty of the Director of Public Prosecutions to call material witnesses is also well settled. In the case of Bukenya and others vs Uganda [1972] EA 549 the Court of Appeal for East Africa set the principle which has since been followed by our Courts as follows:**
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> **"it is well established that the Director has a discretion to decide who are the material witnesses and whom to call but this needs to be qualified in three ways. First, there is duty on the Director to call or make available all witnesses necessary to establish the truth, even though their evidence may be inconsistent. Secondly, the Court itself has not merely the right but the duty to call any person whose evidence appears essential to the just decision of the case (Trial on indictments Decree, S.37). Thirdly while the Director is not required to call a superfluity of witnesses if he calls evidence which is barely adequate and it appears that there were other witnesses available who were not called, the Court is entitled, under the general law of evidence, to draw an inference that the evidence of those witnesses if called, would have been or would have tended to be adverse to the prosecution case."**

In the present case, the evidence of the victim was more than adequate to prove the case against the appellant. It was the victim who was attacked by the appellant and his accomplice, and he was best placed to narrate the facts from that attack. Therefore, provided that his evidence was found to be cogent and to have ruled out mistaken identity, the learned trial Judge could rely on it to convict the appellant, without the need for further evidence. In those circumstances, the trial Court was right not to draw an adverse inference on the failure to call the unidentified lady who had travelled with the appellant and the victim, on the fateful day. Even then, it is the appellant who knew the unidentified lady and the prosecution did not know her whereabouts, so as to trace her and call her as a witness.

The second issue, is whether the learned trial Judge erred to reject the appellant's alibi defence. The learned trial Judge was alive to the fact that the victim was the sole identifying witness in the present case. He warned himself on the danger of a miscarriage of justice being occasioned if the

identification evidence of the victim led to mistaken identity of the appellant. At page 62 of the record, the learned trial Judge stated:

> **"It is clear from the above testimony that the victim is a single identifying witness. No other witness saw firsthand, what happened to the victim.**
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> **The law is that a fact may be proved by a single witness and as such court may rely on a single identifying witness. However, the court must seriously warn itself of the need for testing with the greatest care the evidence of this single witness respecting identification, especially when it is known that the conditions favouring identification were difficult. The court ought to advert to the danger of a single witness being honest but mistaken (see Roria vs. Rep [1967] 583 (sic). I am mindful of this danger as Taabu is the only identifying witness here and the incident happened at about 7:00 pm."**

Further, the learned trial Judge then correctly adverted to the principles laid out in the authority of **Abudalla Nabulere and Another vs. Uganda, Supreme Court Criminal Appeal No. 9 of 1978 (unreported),** to assist a Court faced with a duty to evaluate identification evidence so as to rule out mistaken identity. He then proceeded to evaluate the victim's identification evidence, and the defence evidence in support of the appellant's alibi in his judgment at pages 62 to 63 of the record, before concluding that the victim's evidence was cogent and consistent, and it ruled out the possibility of mistaken identity of the appellant. The learned trial Judge therefore rejected the appellant's alibi.

Counsel for the appellant contended that in reaching the decision to reject the appellant's alibi, the learned trial Judge considered the prosecution evidence in isolation from the defence evidence, which was a legal error. We reject, as false, claims that the learned trial Judge disregarded the evidence adduced for the appellant's defence, because, in various portions of his judgment, the learned trial judge referred to the defence evidence. At page 60 of the record, the learned trial Judge set out the appellant's defence evidence, as follows:

> **"Mulikiriza Badru A1, stated that on the 14th day of October, 2013, he was away in Makoma in Bugiri District where he had gone to attend the burial of his grandfather called Geraido Musumba. It is his evidence that he left for Makoma from his home in Busanza in Bugiri town council on**

the 13th of October, 2013 and did not return until the 15th of October, 2013. On the 14th of October at 12:00 p.m he had slaughtered a cow. It then started raining at 4:00pm till 6:00 pm. The burial was delayed until then because of the rain.

The accused called one Sande Mukove DW3 the LC1 Chairman of Busanza Village who attended the burial and testified that he had indeed seen A1 at the Burial in Makoma. That A1 had even helped mobilise youth to push his car when it got stuck in the mud after the rain.

A2 Abdu Buyinza stated that he and A1 are cousins and that he had attended the same burial on 14th of October, 2013. He left his home at 12:00pm ad rode on his bicycle to Makoma. He carried his mother Kawa Naumbe DW3 as his passenger. That they got to Makoma at 3:00pm. After the burial at 6:00 pm they left for their home at 7:30 pm arriving at 8:30 pm."

The learned trial Judge was also cognizant that the burden lay on the prosecution to adduce evidence to destroy an alibi set up by the defence, and stated in his judgment, at page 60 of the record, as follows:

> **This Court reminds itself that the accused persons have no duty to prove their alibi. What is required is proof to the required standard that the accused was at the scene of crime at the material time."**

We earlier noted that the learned trial Judge rendered careful evaluation to the identification evidence of the victim, and concluded that he had properly identified the appellant. He consequently, found that the appellant had been placed at the scene of crime, and rejected the appellant's alibi as false. We therefore find the appellant's contention that the learned trial Judge disregarded the evidence in support of his alibi evidence to be false and we reject it. The second issue would be answered in the negative.

For the above reasons, ground 1 of the appeal must fail.

Ground 2

On this ground, it is alleged that the prosecution's failure to call evidence of a police officer to testify about the manner and circumstances of the appellant's arrest, as well as to give details of the police investigations into the relevant charges, was fatal to the prosecution case and ought to have led to acquittal of the appellant. Counsel for the appellant relied, for the proposition that failure to call such evidence of arrest ought to be deemed

fatal to the prosecution case, on the authority of **Bogere Moses and Another vs. Uganda, Supreme Court Criminal Appeal No. 1 of 1997 (unreported)**, where the Court stated:

> **"We agree with Sir Udo Udoma, C.J. as he then was where in Rwaneka Vs Uganda (1967) EA 768, at p.771 he said:**
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> **"Generally speaking, criminal prosecutions are matters of great concern to the state; and such trials must be completely within the control of the police and the Director of Public Prosecutions. It is the duty of prosecutors to make certain that police officers who had investigated and charged an accused person, do appear in court as witnesses to testify as to the part they played and the circumstances under which they had decided to arrest and charge an accused person. Criminal prosecutions should not be treated as if they were contests between two private individuals."**

In the same case, the Court, quoted with approval from its earlier decision in the authority of **Alfred Bumbo and 3 Others vs. Uganda, Supreme Court Criminal Appeal No.28 of 1994**, where it was stated:

> **"While it is desirable that the evidence of a police investigating officer and of arrest of an accused person by the police, should always be given where necessary, we think that where other evidence is available and proves the prosecution case to the required standard, the absence of such evidence would not, as a rule, be fatal to the conviction of an accused. All must depend on the circumstances of each case whether police evidence is essential, in addition, to prove the charges"**

The legal position therefore, is that while it is desirable that the prosecution should adduce evidence on the circumstances of arrest of an accused person, where there is other prosecution evidence to prove the prosecution case to the required standard, the absence of that evidence of arrest would not be fatal to the conviction of the accused. In the present case, there was cogent and satisfactory evidence that identified the appellant as one of the persons who had attacked the victim and stolen his motorcycle. As we found while resolving ground 1, that evidence proved the case against the appellant to the requisite standard. Accordingly, we find that the learned trial Judge rightly proceeded to convict the appellant, even in the absence of evidence of the circumstances of arrest of the appellant.

Ground 2 of the appeal, must also fail.

Ground 3

In ground 3, the appellant claimed that the sentence of 30 years and 6 months imprisonment that the learned trial Judge imposed on him, was manifestly harsh and excessive, and also, that the learned trial Judge had failed to consider some mitigating factors in favour of the appellant before imposing that sentence.

It is now well established that if a trial Court omits to take into account any of the relevant material factors, such as, the mitigating factors submitted for the accused person, this Court may interfere with the sentence imposed by the trial Court. **See: Kamya Johnson vs. Uganda, Criminal Appeal No. 16 of 2000 (unreported).** On the contention that the learned trial Judge failed to consider some mitigating factors submitted for the appellant, we note that, during the proceedings from the sentencing hearing, at pages 41 to 42 of the record, the trial Court heard submissions on the relevant mitigating and aggravating factors. For the mitigating factors, it was submitted that the appellant was a first offender with no previous criminal record. He had been on remand for 4 years and 5 months. The appellant was also a family man responsible to care for 2 wives, 8 children and a mother and grandmother, who were both elderly.

On the aggravating factors, it was submitted that the appellant had been convicted of a grave offence of Aggravated Robbery which attracts the maximum death sentence. The appellant had acted with premeditation when he committed the offence. The offence was committed in a violent manner that had caused injuries to the victim, for which he required hospitalization. In his sentencing remarks at page 51 to 53 of the record, the learned trial Judge had explicit regard to the mitigating and aggravating factors before sentencing the appellant. Therefore, we are unable to accept the appellant's contention that the learned trial Judge overlooked mitigating factors submitted in his favour.

We have further considered whether the sentence imposed on the appellant accords with the principle of uniformity in sentencing, as articulated in **Aharikundira Yustina vs. Uganda, Supreme Court Criminal Appeal No. 27 of 2015**, where the Court stated:

"It is the duty of this court while dealing with appeals regarding sentencing to ensure consistency with cases that have similar facts. Consistency is a vital principle of a sentencing regime. It is deeply rooted in the rule of law and requires that laws be applied with equality and without unjustifiable differentiation."

We have considered the sentences imposed in previous cases of aggravated robbery. In **Ssimbwa Hassan Kisembo vs. Uganda, Court of Appeal Criminal Appeal No. 71 of 2015 (unreported)**, the Court of Appeal substituted, as appropriate, a sentence of 25 years imprisonment for one of 55 years imprisonment that had been imposed by the trial High Court, in a case of aggravated robbery. The appellant had been convicted for stealing a motor vehicle which the victim used in his taxi business. Just before the theft, the appellant had given to the victim, food spiked with an anaesthetic substance, to cause the victim to lose consciousness.

In **Abele Asuman vs. Uganda, Supreme Court Criminal Appeal No. 66 of 2016 (unreported)**, the Supreme Court upheld a sentence of 18 years imprisonment imposed by the Court of Appeal in an Aggravated Robbery case. The Court of Appeal had substituted the sentence of 18 years imprisonment for the life imprisonment sentence that the High Court had imposed.

In **Tamale Richard vs. Uganda, Court of Appeal Criminal Appeal No. 0019 of 2012 (unreported)**, the Court of Appeal substituted, as appropriate and in line with the sentencing range in previously decided aggravated robbery cases, a sentence of 18 years imprisonment for that of 25 years imprisonment that the trial Court had imposed.

In line with the above precedents, we find that the sentence of 35 years imprisonment that the learned trial Judge imposed on the appellant before deducting the remand period, was not in harmony with the sentences imposed in those decided cases, and was harsh and excessive, and we set it aside. We shall, pursuant to **Section 11** of the **Judicature Act, Cap. 13**, which, for purposes of determining any appeal, grants to this Court the powers of the trial High Court, including the power to determine an appropriate sentence once the sentence imposed by the trial High Court has been set aside, proceed to determine an appropriate sentence. Having considered the relevant mitigating and aggravating factors alluded to earlier

in this judgment, and the appellant's relatively young age of 32 years, at the time of commission of the relevant offence, we find a sentence of 20 years imprisonment appropriate, to help the appellant to be rehabilitated and reintegrated back into society, as a reformed person. The appellant had spent a period of 4 years, 4 months and 27 days on remand, from 22nd October, 2013 when he was arrested until 19th March, 2018, when he was sentenced by the trial Court. When the remand period is deducted from the sentence we have imposed, the appellant is left to serve a sentence of 15 years, 7 months and 3 days imprisonment, to run from the date of his conviction on 19th March, 2018.

Ground 3 of the appeal is allowed.

In conclusion, the appeal fails as to conviction. We uphold the learned trial Judge's decision to convict the appellant as charged. The appeal as to sentence succeeds on the terms set out in this judgment.

We so order.

Dated at Jinja this ..22nd.. day of ..Dec.. 2021.

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Elizabeth Musoke

Justice of Appeal

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Cheborion Barishaki

Justice of Appeal

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Hellen Obura

Justice of Appeal