

UGANDA / JUDGMENT

Barugindoho Joseph v Uganda (Criminal Appeal No. 0539 of 2023) [2025] UGCA 183 (30 May 2025) [2025] UGCA 183

COURT

Court of Appeal of Uganda

BEFORE

Dr. F. Zeija, DCJ, Gashirabake, JA, K.K. Katunguka,
JJA/JCC

CASE / FILE NUMBER

Criminal Appeal No. 0539 of 2023

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THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT MASINDI

[Coram: F. Zeija, DCJ, C. Gashirabake and K. K. Katunguka, JJA] CRIMINAL APPEAL NO. 0539 OF 2023

BARUGINDOHO JOSEPH ... APPELLANT

VERSUS

UGANDA RESPONDENT

(Arising from the decision of the High Court of Uganda at Masindi (Jesse Byaruhango J.) in Criminal Case No. 0150/2016 delivered on the 12th day of October 2022)

JUDGMENT OF THE COURT**Introduction**

- [1] The appellant was charged, tried, and convicted of the offence of aggravated robbery contrary to sections 285 and 286 of the Penal Code Act (now Cap 128). It was alleged that on the 16th day of June 2016 at about 19.20 hours, at Rwesera village, Kakumiro District robbed a motorcycle registration No. UEK 549 T valued at Ugx. 3,670,000 (Uganda shillings three million, six hundred and seventy thousand only) and immediately before or after the said robbery used a deadly weapon against the victim, Kazibwe Ronald. The appellant was

sentenced to 13 years and 10 months' imprisonment. The appellant was aggrieved with the decision of the trial Court, hence this appeal. The appeal is premised on two grounds ;

- I. The trial Judge erred in law and fact when he failed to consider the string of mitigating factors against a custodial sentence, such as the appellant being a sole breadwinner for the immediate family and a large number of dependents.

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2. The trial Judge erred in law and fact when he failed to evaluate that the appellant was a first-time offender, remorseful and sentenced him to a long custodial sentence.

Representation

2] The Appellant was represented by Ms. Suzan Zemei on State brief. Mr. Okello Richard, Senior State Attorney represented the Respondent.

Submissions by counsel for the Appellant

- 3] Counsel submitted on both grounds jointly because they relate to the sentence. Counsel was alive to the duty of this court as articulated in *Kifamunte Henry vs Uganda*, SCCA No. 10 of 1997, to the effect that this court has to re-examine the evidence on record and come to its own decisions.
- 4] Counsel submitted that the circumstances under which an appellate Court may interfere with a sentence meted out by a trial Court are well articulated in *Kyalimpa Edward vs Uganda* Criminal Appeal No. 10 of 1995, to the effect that an appellate court will not interfere with the decision of the sentencing Judge unless the sentence is illegal or unless the court is satisfied that the sentence imposed by the trial Judge was so manifestly excessive as to amount to an injustice. This position was re-echoed in *Kiwalabye vs Uganda*, Supreme Court, Criminal Appeal No. 143 of 2001.
- 5] Counsel submitted that had the trial Judge considered the principles of fairness and consistency, he would have arrived at a different sentence. Counsel cited *Mbunya Godfrey vs Uganda*, Supreme Court Criminal Appeal No. 4 of 2011 and *Abaasa Johnson and Anor vs Uganda*, CACA No. 33 of 2010, where the courts found that there is a need for consistency while sentencing similar offences. Counsel cited *Nduru Banada vs Uganda*, Court of Appeal, Criminal Appeal No. 249 of 2010, the appellant had been sentenced to 30

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years' imprisonment for the offence of aggravated robbery. This court reduced the sentence to 15 years. In *Oye Twol vs Uganda*, Court of Appeal Criminal Appeal, No. 115 of 2013, this court reduced a sentence of 40 years imposed by the learned trial Judge to 15 years' imprisonment.

- 6] It was contended that the trial Judge did not consider the antecedents of the offender, social status, family status and background as provided for in the second schedule of the Constitution (Sentencing Guidelines for Courts of Judicature) (practice) Directions, 2013. Counsel submitted that in *Pte Kusemererwa & anor vs. Uganda*, CACA No. 83 of 2010, this court held that where there was no loss of life in an aggravated robbery, that would be considered as a mitigating factor.
- 7] Counsel submitted that in this case, there was no fatality and there was no evidence presented regarding the object that was used during the robbery. It was further submitted that the possibility of a fatality was meager and the court ought to have considered that as a mitigating factor. It was submitted during allocutus that the accused was a young man aged 34 years, youthful and remorseful. That he was a father, a husband to an expectant wife and therefore sole breadwinner to an expectant wife. Counsel argued that, regardless of the above, the trial Judge went forth and sentenced the appellant to 20 years' imprisonment without considering the mitigating factors.
- 8] Counsel prayed that this court finds that the trial Judge erred in law and fact when he failed to consider the string of mitigating factors against a custodial sentence. That this court should set aside the sentence.

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Submissions by counsel for the respondent

- 9] Counsel was alive to the fact that this being a first appeal, this court is mandated to re-appraise the evidence and draw its own conclusion as was held in *Kifamunte Henry vs Uganda*, (supra).
- 10] Counsel submitted that the sentence of 20 years took into consideration both the aggravating and mitigating factors that were presented before the court. Counsel submitted that it is trite that the mitigating factors in every case have to be considered alongside the existing aggravating factors, too. Counsel submitted that the offence the appellant was charged carries a maximum sentence of death. It was argued that because the trial court considered the mitigating factors, it ended up with a lenient sentence.
- 11] Counsel submitted that there was no merit in this ground.

- 12] On ground two, counsel submitted that this court as an appellate court is constrained from interfering with the sentence of the trial court unless the sentence by the lower court is illegal or founded on a wrong principle of law or there is failure to consider material factors, or the sentence is manifestly harsh and excessive. Counsel cited *Kizito Senkula vs Uganda*, Supreme Court Criminal Appeal No. 24 of 2001, and *Kiwalabye Bernard vs Uganda* (supra).
- 13] Counsel submitted that the sentence before this court was neither manifestly harsh, nor excessive, nor even illegal in the circumstances. It was argued that the discretion by the trial Judge did not in any way amount to a miscarriage of justice.
- 14] Counsel submitted that the brutality with which the appellant attacked his victim showed that he cared less whether the victim died as a result of the assault. Counsel for the respondent objected to the submission by counsel for the appellant, stating that, since it was not clear what object was used, it should

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be counted as a mitigating factor for the appellant. Counsel submitted that PF3 was submitted in respect of the victim and it was admitted in evidence as P. Exh. 2 and it described at length the life-threatening injuries he sustained in the hands of the appellant and these were in total classified as "grievous harm"

- 15] Regarding consistency, counsel cited *Rutabingwa James vs Uganda*, Supreme Court Criminal Appeal 57 of 2011, where the court upheld a sentence of 18 years' imprisonment regarding aggravated robbery of a motorcycle
- 16] In *Kasibante Erick and another vs Uganda* Court of Appeal Criminal Appeal No. 458 of 2016, the court held that 18 years meted down fell within the sentencing range of aggravated robbery.
- 17] In *Saava Sedu Tonny vs Uganda*, Court of Appeal Criminal Appeal No. 0600 of 2014, the appellate court handed down a sentence of 20 years.
- 18] Counsel submitted that with the above cases, it was evident that the sentence meted down by the trial Court was not manifestly harsh and excessive as alleged by counsel for the appellant. Counsel prayed that this ground should fail.
- 19] Counsel submitted that this appeal lacks merit, therefore, it should fail.

Consideration of the Court

Role of the First Appellate Court

- 20] Under Rule 30(1) of the Judicature (Court of Appeals) Directions, 2005, the duty of this court as the first Appellate Court is to re-evaluate the evidence on record and come to its own conclusions. This was re-echoed in *Henry Kifamunte vs Uganda* (supra).

- 21) For this court, as a first appellate court, to interfere with the sentence of a trial Court, it must be shown that; the sentence is illegal, the sentence is harsh

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or manifestly excessive, there has been failure to exercise discretion, there was failure to take into account a material factor and an error in principle was made. The Supreme Court in *Kiwalabye Benard vs Uganda* (supra) held that;

"the appellate court is not to interfere with the sentence imposed by the trial court which has exercised its discretion on sentence unless the exercise of the discretion is such that it results in the sentence imposed to be manifestly excessive or so low as to amount to a miscarriage of justice or where a trial court ignores to consider an important matter or circumstances which ought to be considered while passing the sentence or where the sentence imposed is wrong in principle. "

221 The sentencing proceedings were as follows;

"State: The accused is a 1st time offender. The victim, however, suffered grievous harm, and the motorcycle has never been recovered. I pray for a deterrent sentence. We pray for 25 years' imprisonment and an order of compensation of the value of the motorcycle, i.e., Ugx 3,670,000/:-.

Mr. Mugabi: The accused is a 1st offender. He is a young man, youthful and resourceful to the nation. He is 34 years old. There is room for him to reform. He has been on remand since 2016, i.e., 6 years and 2 months. The accused left a child and a pregnant woman, who, after delivery, left home. The newborn was left with the accused's auntie. That is all.

Sentence

The accused is a 1st offender and a youth aged 34 years. I find that he still has room for reform. He left a family behind, but it is my view that he deserves a deterrent sentence, considering the fact that boda boda riders risk their lives in the hands of people of the accused's kind.

In the premises, I sentence the accused to 20 years' imprisonment. Taking into account the period he has spent on remand, i.e., 6 years and 2 months,

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the accused / convict will serve 13 years & 10 months' imprisonment. Upon serving the sentence, the accused / convict is to pay Shs. 3,670,000/:- (the value of the stolen motorcycle) as compensation to the victim, Kazibwe Ronald.

Lastly, the convict is to report to Kkaumiro police O. C once a month for 3 months as a form of supervising by section 124 TIA, to ensure the convict's good conduct.

Right of Appeal explained."

231 We have evaluated the evidence on record and it is our finding that the trial Judge put into consideration all the mitigating factors and antecedents as presented by counsel for the appellant. We cannot, therefore, fault him.

24) We are mindful of the principle of consistency as well articulated in *Aharikundira Yustina vs Uganda* (supra), where the Supreme Court held;

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

251 In *Aramanthan Hassan and Another vs Uganda*, Court of Appeal, Criminal Appeal No. 715 of 2015, this court maintained the sentence of 20 years' imprisonment for aggravated robbery, where the appellant stole ^a motorcycle. In *Aryaija Didas and 5 others vs Uganda*, Court of Appeal, Criminal Appeal No.051 of 2020, this court found the sentence of 20 years to be appropriate in the circumstances of the case.

261 Having found that the trial Judge followed all the sentencing principles set out in the Constitution (Sentencing Guidelines for Courts of Judicature) (practice) Directions, 2013, we find that this appeal has no merit.

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Decision.

- 1. The appeal fails.
- 2. The appellant will continue serving his sentence.

We so Order

Dated and delivered this day of $\frac{1}{2}$ \$
\cdots \cdots \cdots \$

DR. FLAVIAN ZEIJA

DEPUTY CHIEF JUSTICE

CHRISTOPHER GASHIRABAKE

JUSTICE OF APPEAL

KETRAH KITARIISIBWA KATUNGUKA JUSTICE OF APPEAL

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Prepared on 12 October 2026 · Esheria