

UGANDA / JUDGMENT

Uganda v Gidongo (Criminal Session No. 0424 of 2016) [2019] UGHCCRD 11 (7 February 2019) [2019] UGHCCRD 11

COURT

HC: Criminal Division (Uganda)

BEFORE

Stephen Mubiru, J

CASE / FILE NUMBER

Criminal Session No. 0424 of 2016

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA SITTING AT KAMPALA

CRIMINAL SESSIONS CASE No. 0424 OF 2016

UGANDA PROSECUTOR

VERSUS

GIDONGO MARTIN ACCUSED

Before Hon. Justice Stephen Mubiru.

JUDGMENT

The accused is indicted with one count of Aggravated Robbery c/s 285 and 286 (2) of *The Penal Code Act*. It is alleged that the accused and others still at large on 5th November, 2015 at Ttula village in Wakiso District robbed Kamoga Fred of a motorcycle Registration No. UEA 450 G a Bajaj Boxer, red in colour valued at shs. 2,800,000/= and during, immediately before or immediately after the said robbery, used a deadly weapon, to wit, a hammer on the said Kamoga Fred.

The prosecution case is that the victim P. W.2 Kamoga Fred was employed by P. W.3 Anthony Wamaniala as a boda-boda rider for motorcycle Registration No. UEA 450 G. On the fateful evening towards 8.00 pm, the accused approached him and asked him to carry him to a place in Kizingiza Zone, Ttula Kawempe. The place being notorious for violent crime, P. W.2 Kamoga Fred declined to carry the accused as he was a stranger. Shortly after another passenger P. W.2 knew and a regular customer came and asked him to carry him to the same destination, which he did. On his way back from Kizingiza where he had just dropped the passenger, he was flagged down

by an unidentified man but he rode on past him as the area was notorious for violent crime. He was however intercepted by another motorcycle a few metres ahead as he came to the main road at a T-Junction. As the passenger on the motorcycle that intercepted him was rebuking him for his earlier refusal to carry him, the man he had by-passed approached from behind and as P. W.2 turned round to face him, the man struck him on the head with a hammer and he fell down unconscious. He regained his consciousness about a week later and found himself admitted in hospital. He had sustained a wound on his head and the motorcycle was missing. Investigations led to the arrest of the accused and P. W.2 Kamoga was able to pick him out of an identification parade as the perpetrator of the offence.

In his defence, the accused D. W.1 Gidongo Martin denied any participation. He had about a month before been employed by P. W.3 Anthony Wamaniala as a boda-boda rider of that very motorcycle. P. W.3 withdrew it from him three days after the brother of the accused had gone missing with another motorcycle belonging to P. W.3. He was offered new employment as a boda-boda rider by a one Manana. One week later he was at the boda-boda stage when P. W.3 Anthony Wamaniala came with policemen who arrested him and accused him of having robbed a motorcycle from P. W.2 Kamoga Fred yet he saw him for the first time at the police station during an identification parade at which P. W.2 picked him out as the perpetrator of the offence.

Since the accused pleaded not guilty, like in all criminal cases the prosecution has the burden of proving the case against him beyond reasonable doubt. The burden does not shift to the accused person and he can only be convicted on the strength of the prosecution case and not because of weaknesses in his defence, (see **Ssekitoleko v. Uganda* [1967] EA 531*). The accused does not have any obligation to prove his innocence. By his plea of not guilty, the accused put in issue each and every essential ingredient of offence with which he is indicted and the prosecution has the onus to prove each of the ingredients beyond reasonable doubt before it can secure his conviction. Proof beyond reasonable doubt though does not mean proof beyond a shadow of doubt. The standard is satisfied once all evidence suggesting the innocence of the accused, at its best creates a mere fanciful possibility but not any probability that the accused is innocent, (see **Miller v. Minister of Pensions* [1947] 2 ALL ER 372*).

For the accused to be convicted of Aggravated Robbery, the prosecution must prove each of the following essential ingredients beyond reasonable doubt;

1. Theft of property belonging to another.
2. Use or use threat of use of violence against the victim.
3. Possession of a deadly weapon during the commission of the theft.
4. The accused participated in commission of the theft.

The first element, taking of property belonging to another, requires proof of what amounts in law to an asportation (that is carrying away) of the property of another without his or her consent. The property stolen in this case is alleged to be motorcycle Registration No. UEA 450 G a Bajaj Boxer, red in colour. P. W.2 Kamoga Fred testified that some time after 8.00 pm on his way back

from Kizingiza where he had just dropped a passenger, he was flagged down by an unidentified man but he rode on past him as the area was notorious for violent crime. He was however intercepted by another motorcycle a few metres ahead as he came to the main road at a T-Junction. As the passenger on the motorcycle that intercepted him was rebuking him for his earlier refusal to carry that passenger, the man he had by-passed approached from behind and as P. W.2 turned round to face him, the man struck him on the head with a hammer and he fell down unconscious. He regained his consciousness about a week later and found himself admitted in hospital. He had sustained a wound on his head and the motorcycle was missing.

P. W.3 Anthony Wamaniala testified that he was the beneficial unregistered owner of that motorcycle. He presented its log-book (exhibit P. Ex.2). He learnt about that theft the following morning and the motorcycle has never been recovered. In his defence, the accused D. W.1 Gidongo Martin denied any knowledge of that theft. Having considered all the available evidence relevant to this element, in agreement with the assessors, I find that the prosecution has proved beyond reasonable doubt that motorcycle Registration No. UEA 450 G a Bajaj Boxer, red in colour was stolen in the evening 5th November, 2015.

The prosecution was further required to prove the use or threat of use of violence against the victim during that theft. There is oral testimony of P. W.2 Kamoga Fred who testified that as he turned round to face the man who had approached him from behind, the man struck him on the head with a hammer and he fell down unconscious. He regained his consciousness about a week later and found himself admitted in hospital. He had sustained a wound on his head. He has since become physically incapacitated and cannot stand for long before feeling dizzy. He is now unemployed and his marriage broke up. P. W.3 Anthony Wamaniala testified that the following day he went to the hospital where he found P. W.2 admitted but he was still unconscious. He had sustained a wound on his head. He regained his consciousness about a week later.

P. W.1 Mr. Galabuzi Emmanuel examined the victim on 6th November, 2016 and his evidence was admitted during the preliminary hearing. His findings are contained in P. F.3 (exhibit P. Ex.1). It indicates that the victim sustained a deep wound on the right aspect of the head approximately two inches long and one inch across. In his view, it had been inflicted less than six hours before that examination. His opinion is that it could have been inflicted by a hammer or iron bar. Considering the evidence as a whole relating to this element and in agreement with the opinion of the assessors, I find that the prosecution has proved beyond reasonable doubt that immediately before, during or immediately after theft of some of the property mentioned the indictment, violence was used against P. W.2 Kamoga Fred to the point of rendering him unconscious.

The prosecution was further required to prove that immediately before, during or immediately after the said robbery, the assailants had deadly weapons in their possession. A deadly weapon is defined by section 286 (3) of *The Penal Code Act* as one which is made or adapted for shooting, stabbing or cutting and any instrument which, when used for offensive purposes, is likely to cause death. P. W.2 Kamoga Fred testified that the man struck him on the head with a hammer and he fell down unconscious. He regained his consciousness about a week later and found

himself admitted in hospital. He had sustained a wound on his head. He has since become physically incapacitated and cannot stand for long before feeling dizzy. He is now unemployed and his marriage broke up. P. W.1 Mr. Galabuzi Emmanuel examined the victim on 6th November, 2016 and his evidence was admitted during the preliminary hearing. His findings are contained in P. F.3 (exhibit P. Ex.1). It indicates that the victim sustained a deep wound on the right aspect of the head approximately two inches long and one inch across. In his view, it had been inflicted less than six hours before that examination. His opinion is that it could have been inflicted by a hammer or iron bar. Considering the evidence as a whole relating to this element and in agreement with the opinion of the assessors, I find that the prosecution has proved beyond reasonable doubt that the assailants had a deadly weapon in their possession and used it during the robbery.

Lastly, the prosecution had to prove that the accused participated in commission of the offence. This is done by adducing direct or circumstantial evidence placing each of the accused at the scene of crime as perpetrator of the offence, or as an accessory thereto. The accused denied having participated in the commission of the crime and set up an alibi. The burden lies on the prosecution to disprove it by adducing evidence which squarely places the accused at the scene of crime as an active participant in the commission of the offence (see **Vicent Rwamaro v. Uganda* [1988-90] HCB 70; **Ssebyala and others v. Uganda* [1969] E. A. 204* and **Col. Sabuni v. Uganda* 1982 HCB 1*).

To disprove that defence, the prosecution relies on identification evidence of P. W.2 Kamoga Fred, who stated that he saw the accused twice that evening; first when he approached him for a ride to Kizingiza and the second time when he saw him as a passenger on the motorcycle that intercepted him. He was also able to pick him out during the identification parade. Where prosecution is based on the evidence of indentifying witnesses under difficult conditions, the Court must exercise great care so as to satisfy itself that there is no danger of mistaken identity (see **Abdalla Bin Wendo and another v. R* (1953) E. A. C. A 166*; **Roria v. Republic* [1967] E. A 583*; and **Bogere Moses and another v. Uganda*, S. C. Cr. Appeal No. 1 of 1997)*. It is necessary to test such evidence with the greatest care, and be sure that it is free from the possibility of a mistake. The Court evaluates the evidence having regard to factors that are favourable, and those that are unfavourable, to correct identification. In doing so, the court considers; whether the witnesses were familiar with the offender, whether there was light to aid visual identification, the length of time taken by the witnesses to observe and identify the offender and the proximity of the witnesses to the offender at the time of observing him.

I have considered the circumstances that prevailed when both P. W.2 Kamoga Fred claims to have seen the accused both before and at the scene of crime. It was during the night but there was light emanating from security lights from neighbouring buildings on both encounters, from a street light at the first encounter and from the motorcycle head lamp on the second encounter which aided his observation and recognition of the accused. Under those conditions of lighting, he came into close proximity of the accused. Although on the second occasion the attack was sudden, it came after he had intercepted with the accused as the accused was rebuking him for

refusing to carry him previously, and this gave them ample time and opportunity to have an unimpeded look at the accused.

The third time the witness saw the accused was at an identification parade. He stated that he was able to recognise him at the parade because of his light complexion, the pimples and being a person he had looked at keenly before as he asked the witness to carry him as is his habit when strangers request for rides, and demand that they explain in detail their proposed destination. He was wearing a black jacket at the parade. There were about five or six other people with jackets in the parade. There were about seven or eight other light skinned people in that parade like him. The accused still had some pimples but some had left black spots. He stood as the second person from the left to right on the first line. The witness inspected both lines and looked at everyone on the parade until he identified the accused. He looked keenly at the face of the accused before picking him out.

The rules governing the conduct of an identification parade are;- (i) the suspect should be informed that he or she may have an advocate or friend present when the parade takes place; (ii) the police officer in charge of the parade should not be the investigating officer. Although the investigating officer may be present, he or she should not carry out the identification or participate in it; (iii) the witnesses should not see the suspect before the parade or any member of the parade before they are brought in for purposes of making an identification; (iv) the suspect should be placed among at least eight persons, as far as possible of similar age, height, general appearance and class of life as himself or herself; (v) the suspect should be allowed to take any position he or she chooses, and that he or she should be allowed to change his or her position after each identifying witness has left, if he or she so desires; (vi) care should be exercised that the witnesses are not allowed to communicate with each other after they have been to the parade; (vii) every person who has no business there should be excluded; (viii) a careful note should be made after each witness leaves the parade, recording whether the witness identifies or other circumstances (ix) if the witness desires to see the accused walk, hear him speak, see him with his hat on or off, this should be done. As a precautionary measure it is suggested the whole parade be asked to do this; (x) the witness should touch the person he or she identifies; (xi) at the termination of the parade or during the parade, the suspect should be asked if he or she is satisfied that the parade is being conducted in a fair manner and a note of his or her reply should be made; (xii) when introducing the witness, the witness should be told that he or she will see a group of people who may or may not contain the suspect. The officer conducting the parade should not say, "Pick out somebody", or influence the witness in any way whatsoever; (xiii) the officer conducting the parade should act with scrupulous fairness, otherwise the value of the identification as evidence will depreciate considerably (see *R v. Mwango s/o Manaa [1936] 3 EACA 29*; *Ssentale v. Uganda [1968] EA 365* and *Stephen Mugume v. Uganda, S. C. Criminal Appeal No. 20 of 1995*).

In the instant case, P. W.4D/AIP Aharimpisya Benon testified that he conducted the parade on 13th November, 2015 at around 2.00 pm. He had twenty seven volunteers forming two lines and the accused was in the first line. P. W.1 walked along the two lines and came back and touched

the accused as the one who was among the three that robbed him. The participants in the parade were suspects from the cells but were about the size of the suspect in height and some dressed to look like the suspect to avoid unnecessary exposure of the person or easy identification. The volunteers, including the accused, came out of the cells randomly and took positions in the two lines according to the sequence in which they came out. He did not choose a position for any of them but they positioned themselves the way they came out of the cells. About one hour before the parade, he informed the accused that he could have a relative or advocate present but the accused had none present. P. W.1 first walked and by-passed the accused, went to the second row, went round and came back to the first line and touched the accused.

It is clear from his testimony that not all rules for conducting the identification parade were followed meticulously but the majority were followed substantially. An identification parade is essentially a direct personal identification method where a number of people with more or less the same appearance, attire and social standing are paraded, with the purpose of the identifying witness being able to identify the person whom he or she saw, and of whom he or she has a mental image imprinted in memory, allowing the witness to identify the person they allegedly saw during the commission of the offence, and who is suspected of having been involved in the commission of the offence.

Recognising a face that is familiar is a relatively fast process that involves determining whether there is a match between a face and representation that exists in memory. However, identification of someone seen only once before is a relatively slower process that involves recalling contextual information regarding the circumstances surrounding the initial perception and encoding of the characteristics of that person. Identification of a suspect involves recognising the distinctive features of the individual's uniqueness through a process of comparison with the image that was retained in the memory of the witness.

The thirteen rules are designed to ensure accurate and fair identification. The rules exist to test justly and accurately determine the ability of the witness to recognise the offender, and to eliminate the possibility of suggestion as a deciding factor in the identification. Although it is desirable that they are meticulously observed in all case, but just like the right to a fair trial is not violated every time a rule of procedure is not followed, the outcome of an identification parade is not discredited only because it is regarded as less than perfect. Where the rules are not followed meticulously, reliability of the outcome depends on whether or not the violations of the rules resulted in suggestibility to the identifying witness and as to whether the accused was or was not prejudiced. If as a result of flouting the rules the element of suggestion is in any way present, the value of the parade will diminish. Where on the other hand despite the errors the possibility of suggestion is eliminated as having been a deciding factor, the outcome will be reliable.

The identification parade was conducted after P. W.1 had declared that he would be able to identify the offender, before the witness could compare his observation with other eyewitnesses, since there were none. Although counsel for the accused in his submissions suggested that there could have been collusion between P. W.1 and P. W.2, there is no evidence before court regarding the possibility of collusion, whether deliberate or not, between P. W.1 and any other person. The

fundamental principle of the identification parade is that of fairness to the suspect, a fairness which should be apparent in the procedure as a whole. The Identification Parade Report, commonly known as Police Form 19 (exhibit P. Ex. 3) is essential, for ensuring that an accurate account of events is furnished to the court. It indicates that the accused did not request for the presence of an advocate; 25 volunteers participated; guided by their age range and calling in life, I am inclined to believe that they were people with more or less the same social standing and appearance as that of the accused. The accused did not raise any complaint or indicate dissatisfaction with the parade at the termination of the parade or at any time during the parade.

Identification can be influenced by a witness's ability to observe, memorise, fear, panic or similar emotion, the effects of lighting and distance at the scene of crime, but also by association and suggestion after the offence, all of which have an impact on the accuracy of the eyewitness's memory and can influence the identification parade. I find that the accused had ample time and opportunity to have an unimpeded look at the accused on the two occasions that occurred before the identification parade and that it is the image that was retained in his memory on those two occasions that was the deciding factor in his identification of the accused. There is no evidence to show that he was aided by anyone or that the parade was conducted in a manner that was prejudicial to the accused. I therefore find that the outcome of the identification parade is reliable because there was a sufficient number of people in the parade with more or less the same social standing and appearance as that of the accused. He did not look substantially different from the other participants. For those reasons, I am satisfied that the accused was properly identified at the scene of crime and at the identification parade as being one of the men who robbed the Complaint on the fateful day.

What is left is the determination of the question whether the accused was a participant in the commission of the offence since according to P. W.2 Kamoga Fred, as the accused was rebuking him for his earlier refusal to carry him, the man he had by-passed approached from behind and as P. W.2 turned round to face him, the man struck him on the head with a hammer and he fell down unconscious. The blow that caused P. W.2 to black out was therefore not inflicted by the accused.

According to section 20 of *The Penal Code Act*, when two or more persons, acting in concert, knowingly participate in a criminal activity, each is responsible for the acts of the other done in furtherance of the commission of the offence. The guilt of the accused who is party to such criminal activity will be the same as that of the person acting, unless the act was one which the person could not reasonably expect to be done in the furtherance of the commission of the offence. On the other hand, under section 19 of *The Penal Code Act*, there are different modes of participation in crime; direct perpetrators, joint perpetrators under a common concerted plan, accessories before the offence, etc. Each of the modes of participation may, independently, give rise to criminal responsibility. By that provision, individual criminal responsibility can be incurred where there is either aiding or abetting of the offence.

Mere proximity to or presence of an accused at the scene of crime or knowledge of the crime, without more, is not sufficient to constitute aiding and abetting. The guilt of a person who knowingly aids and abets the commission of an offense must be determined solely upon the facts which show the part he had in it and does not depend upon the degree of another person's guilt. Though mere presence of an accused at the scene of the crime does not of itself prove that he or she aided and abetted its commission, aiding and abetting need not be shown by direct proof, but may be inferred from circumstantial evidence, including presence, companionship, and conduct before or after the offense is committed. The prosecution need not prove that accused entered into an agreement or pact to commit an offence. Common intention may be inferred from the conduct, presence and actions of the accused or from the failure of the accused to disassociate himself from the commission of the offence (see *Uganda v. Mado Robert and two others, H. C. Criminal Sessions Case No. 720 of 2002*).

In the instant case, it is the motorcycle rider that carried the accused as a passenger which intercepted that of P. W.2 Kamoga Fred. The accused was talking to P. W.2 when a third party approached from behind P. W.2 and struck him with a hammer on the head. The accused took no step to draw the attention of people in the neighbourhood to come to the rescue of P. W.2 by for example raising an alarm. He was more or less left for dead at the scene. The accused never reported to any person in authority what he had just witnessed, which conduct would be reasonably expected of an innocent bystander in similar circumstances. Indeed he took no step to disassociate himself from the crime. Section 19 (1) (b) and (c) of *The Penal Code Act*, lists persons who are deemed to have taken part in committing an offence and to be guilty of the offence and who may as a consequence be charged with actually committing it. This includes every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence and every person who aids or abets another person in committing the offence.

Furtherance of a crime is not limited to acts done to promote or advance the crime, but includes acts done that further it. Where a person, with knowledge of the unlawful object sought to be attained, does or omits to do something for the purpose of furthering the unlawful object, this provides powerful circumstantial evidence from which membership in the conspiracy can be inferred. It would be evidence of an agreement, whether tacit or express, that the unlawful object should be achieved. In the instant case, the accused distracted P. W.2 as the assailant approached from behind. Thereafter he took no steps to disassociate himself from the crime.

I have found that the evidence against the accused has disproved his defence and placed him squarely at the scene of the crime as a participant in the robbery of the motorcycle. Having found that the accused abetted the commission of the offence, the prosecution has proved all the essential ingredients of the offence beyond reasonable doubt. The accused is accordingly found guilty and is hereby convicted for the offence of Aggravated Robbery c/s 285 and 286 (2) of *The*
Penal Code Act.

Dated at Kampala this 7th day of February, 2019

Stephen Mubiru

Judge,

7th February, 2019.

SENTENCE AND REASONS FOR SENTENCE

Upon the accused being convicted for the offence of Aggravated Robbery c/s 285 and 286 (2) of *The* *Penal Code Act*, the learned Principal State Attorney has submitted that; the convict has been on remand since 26th November, 2015. The offence is rampant. The circumstances are that the victim has been incapacitated as a result of the injuries. The wife abandoned him and is now under the care of his brother. P. W.3 lost a motorcycle worth shs. 3,300,000/= and to date it has not recovered. Under section 286 (4) it is just that he is compensated. She prayed for a custodial sentence to serve as an example to other would be perpetrators.

In his submissions in mitigation of sentence, the learned defence counsel has argued that; the convict He is s first offender with no criminal record. He deserves a lenient sentence. He is 26 years old and therefore is a youthful offender. He should be sentenced leniently because he has chances of reform. He has a wife, two children the eldest of whom is 11 years and the younger one 6 years both are of school going age. He deserves a lenience to enable him resume his parental responsibilities. He has been on remand since October, 2015 and counsel proposed a term not exceeding 13 years so that he can resume his life. In his *allocutus*, the convict stated that he has a family so he prayed for lenience to enable him return and look after his family. He was looking after his mother in the village since his father died. He is out of touch with his brother who went missing with another motorcycle belonging to the complainant.

Under section 286 (2) of *The* *Penal Code Act*, the maximum punishment for the offence of Aggravated Robbery is death. According to paragraph 18, Part 6 of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*, the court may only pass a sentence of death in exceptional circumstances in the "rarest of the rare" cases where the alternative of imprisonment for life or other custodial sentence is demonstrably inadequate. By implication, life is the norm and death is the exception. However, "rarest of rare" is often misunderstood to mean the rarity of the case. To the contrary, the court is supposed to look at the case holistically, understand the factors that led to the crime, the circumstances of the convict and the victim, among other things, before pronouncing the sentence. The death sentence is supposed to be imposed when the alternative option is unquestionably foreclosed. It a punishment of last resort when, alternative punishment of a long period of imprisonment or life imprisonment will be futile and serves no purpose. This case does not fit the category of "rarest of rare" and for that reason I have found that the death penalty inappropriate. Therefore that sentence has not been imposed.

Where the death penalty is not imposed, the starting point in the determination of a custodial sentence for offences of murder has been prescribed by Item 1 of Part I (under Sentencing ranges - Sentencing range in capital offences) of the Third Schedule of *The Constitution

(Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013* as 35 years' imprisonment. Some of the factors under Regulation 31 of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013* aggravating the sentence applicable to this case are;- the offender being part of a group or gang and the role of the offender in the group, gang or commission of the crime; the value of the property taken during the commission of the offence; the offence having been committed as part of a premeditated, planned or concerted act and the degree of pre-meditation; the rampant nature of the offence in the area or community. Furthermore, in *Ninsiima v. Uganda Crim. Appeal No. 180 of 2010*, the Court of appeal opined that these guidelines have to be applied taking into account past precedents of Court, decisions where the facts have a resemblance to the case under trial.

I have considered sentences passed before in similar circumstances. For example in *Kusemererwa and Another v. Uganda, C. A. Criminal Appeal No. 83 of 2010*, a sentence of 20 years' imprisonment was upheld in respect of convicts who had used guns during the commission of the offence, but had not hurt the victims. In *Naturinda Tamson v. Uganda C. A. Criminal Appeal No. 13 of 2011*, a sentence of 16 years imprisonment was imposed on a 29 year old convict for a similar offence. I have in light of the aggravating factors in the case, especially the fact that the victim nearly lost his life and guided by the current sentencing practice in offences of this nature, adopted a starting point of thirty five (35) years' imprisonment.

Some of the factors under Regulation 32 of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013* mitigating the sentence applicable to this case are;- the offender having had a subordinate or lesser role in a group or gang involved in the commission of the offence; he is a first offender with no previous conviction or no relevant or recent conviction; and the family responsibilities of the offender. The seriousness of this offence is mitigated by those factors. The severity of the sentence the convict deserves has been tempered by those mitigating factors and is reduced from the period of thirty five (35) years, proposed after taking into account the aggravating factors, now to a term of imprisonment of twenty eight (28) years.

It is mandatory under Article 23 (8) of the *Constitution of the Republic of Uganda, 1995* to take into account the period spent on remand while sentencing a convict. Regulation 15 (2) of The *Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*, requires the court to "deduct" the period spent on remand from the sentence considered appropriate, after all factors have been taken into account. This requires a mathematical deduction by way of set-off. The convict was remanded on 26th November, 2015 and hence has been on remand for three (3) years and three (3) months. I hereby take into account and set off the period the convict has already spent on remand. I therefore sentence to a term of imprisonment of twenty four (24) years and eight (8) months.

It is further mandatory under section 286 (4) of *The Penal Code Act*, where a person is convicted of Aggravated Robbery c/s 285 and 286 (2), unless the offender is sentenced to death, for the court to order the person convicted to pay such sum by way of compensation to any person to the prejudice of whom the robbery was committed, as in the opinion of the court is just having regard to the injury or loss suffered by such person. There was evidence that property was

lost and serious bodily injury inflicted. I have therefore found that a sum of shs. 2,000,000/= as compensation to P. W.2 and shs. 1,000,000/= as compensation to P. W.2.

The convict is advised that he has a right of appeal against both conviction and sentence within a period of fourteen days.

Dated at Kampala this 7th day of February, 2019 Stephen Mubiru

Judge,

7th February, 2019.

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