**Mawanda v Uganda**

**Division:** Supreme Court of Uganda at Mengo

**Date of judgment:** 28 February 2000

**Case Number:** 4/99

**Before:** Tsekooko, Karokora, Mulenga, Kanyeihamba and

Mukasa-Kikonyogo JJSC

**Sourced by:** B Tusasirwe

**Summarised by:** M Kibanga

*[1] Appeal – Advocate conceding to lesser offence on appeal – Appellant convicted of and sentenced for*

*lesser offence – Whether conviction and sentence sustainable.*

*[2] Appeal – Duty of court on appeal – Whether court has duty to re-evaluate evidence on appeal.*

*[3] Criminal practice and procedure – Unequivocality – Appellant convicted of and sentenced for*

*aggravated robbery – On appeal Appellant’s advocate conceding to simple robbery – Whether such*

*concession an unequivocal admission of guilt.*

**Editor’s Summary**

On the night of 13 January 1993 a husband and wife (the complainants) were attacked in their bedroom by about three men, who assaulted them and stole various items from them. Early the following day, security personnel on patrol intercepted a man carrying a bag containing diverse items and later two other men, one of whom was the Appellant. The security personnel took the men to the home of the complainants and the complainants identified the items as their property. The Appellant’s two colleagues escaped custody at different times before trial and the Appellant was tried alone at the High Court for the offence of aggravated robbery contrary to sections 272 and 273(2) of the Penal Code convicted and sentenced to death. The Appellant appealed to the Court of Appeal on the ground that there was insufficient evidence to convict him, and prayed for an acquittal. However, unlike in the memorandum of appeal to the Court of Appeal, counsel for the Appellant, in his submissions, did not pray for an outright acquittal and appeared to concede to the Appellant’s commission of simple robbery. Although this argument did not seem to confirm to the grounds in the memorandum, none of the grounds was withdrawn. The Court of Appeal in reliance on the concession by counsel quashed the High Court conviction and sentence and substituted therefor a conviction of simple robbery and a sentence of imprisonment for ten years, with orders for police supervision for 3 years, corporal punishment of six strokes, and compensation to the complainants of UShs 100 000. Against that conviction, the Appellant appealed further to the Supreme Court on three main grounds, namely: that the initial conviction was erroneously based on the recent possession of a stolen radio cassette when it was not proved that a radio cassette had been stolen; that the Court of Appeal had erred by basing its decision on concession by counsel that the Appellant had participated in the robbery; and that the court had failed to consider the defence of alibi raised.

**Held** – As a general rule, whatever counsel said to the court, whether a statement of fact or an argument, was deemed to be said on instructions of the client. A statement amounting to an admission that the client committed the offence in issue was, however, to be treated in accordance with section 28(3) of the Constitution, which provides that for an accused person to be convicted on a plea it must be himself who pleads guilty and his advocate cannot enter a plea on his behalf; *Manager, Tank Building Contractors v Republic* [1968] EA 120 followed. Where a convicted person opted to challenge the verdict, an alteration of his position to admit commission of the offence should be treated like a change of plea. A purported plea by an advocate on behalf of his client was to be taken as the advocate’s own opinion of the evidence; advocates were not to assume the role of judges. The Court of Appeal was under a duty to re-evaluate the evidence on record and make its own conclusion on the guilt or innocence of the Appellant, notwithstanding the counsel’s concession; *Kifamunte Henry v Uganda* criminal appeal number 10 of 1997 (UR) and *Begere Moses and another v Uganda* criminal appeal number 1 of 1997 (UR) followed. There was no sufficient evidence to warrant conviction of the Appellant. The appeal was allowed, the conviction quashed and the sentence set aside.

**Cases referred to in judgment**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

*Bogere Moses and another v Uganda* criminal appeal number 1 of 1997 (UR) – **F**

*Ezera Kyabanamaizi v R* [1962] EA 309

*Kifamunte Henry v Uganda* criminal appeal number 10 of 1997 (UR) – **F**

*Manager, Tank Bulding Contractors v Republic* [1968] EA 120 – **F**