

**THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA
SITTING AT MBALE**

(Coram: Egonda Ntende, Cheborion Barishaki, Muzamiru Kibeedi, JJA)

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CRIMINAL APPEAL NO.279 OF 2016

NAMUGERA GEOFREY ::::::::::::::::::::::::::::::::::::::: APPELLANT

VERSUS

10 **UGANDA ::::::::::::::::::::::::::::::::::::::: RESPONDENT**

[Arising from the decision of the High Court sitting at Mukono (Hon. Lady Justice Mutonyi Margaret) dated 15.9.2016 in HCT-14-CR-SC-0115 OF 2010]

JUDGMENT OF COURT

15 This is an appeal against only the sentence of 20 years' imprisonment for the offence of aggravated defilement.

The brief background to this appeal is that the victim, Namagembe Rahma, aged 10years was staying with her mother in Kyetume village in Mukono District. The appellant was a resident of the same village. In
20 November 2015 while the victim's mother was away, the victim went to have a bath outside the house. She was followed by the appellant who took her to the kitchen and while standing removed his trousers and had sex with her. After a week he returned to the home of the victim, had sex with her again and gave her shs.5000/= in order not to tell anybody.

25 On 6/12/2015 while the victim's mother had gone to the victim's room, she found shs.5000/= under the mattress. She asked the victim about the source of the money. She disclosed that the appellant had given her the money after having sex with her. The matter was reported to the Police.

30 The victim was examined on Police Form 3A and found to be 10 years old, had a ruptured hymen and redness of vulva. The appellant was examined and found to be 33 years of age with a normal mental status.

The appellant was indicted and convicted on his own plea of guilty of the offence of Aggravated Defilement contrary to sections 129 (3) & (4) (a) of the Penal Code Act and sentenced to 20 years' imprisonment.

35 Being dissatisfied with the sentence passed by the trial court, the appellant appeals against sentence only on one ground namely:

1. That the Learned Trial Judge erred in law and/or fact when she sentenced the Appellant to a harsh and/or excessive sentence of 20 years.

40 **Representations.**

At the hearing of the appeal, Ms. Kanyago Agnes appeared for the appellant on State Brief, while Mr. Peter Mugisha from the Office of the Director of Public Prosecutions appeared for the respondent.

45 Both parties filed written submissions which they adopted when the appeal came up for hearing.

Appellant's Arguments.

Counsel argued that the Learned Trial Judge convicted the Appellant on his own plea of guilty and sentenced him to a 20-year imprisonment term which was harsh and/or excessive. That the appellant had pleaded guilty
50 to the indictment which had saved a lot of Court's time and Government resources, was remorseful right from the start and even sought Court to give him an opportunity to apologize hence deserved a lenient sentence.

Counsel further argument that the sentence did not comply with paragraph 6(c) of The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013 which requires every Court when sentencing an offender to take into account the need for consistency with appropriate sentencing level...".

Counsel referred us to the case of Abale Muzamil Vs Uganda C.A.C.A. No. 0039 of 2014 where this court confirmed a sentence of the High Court of 19 years imprisonment for aggravated defilement after a full trial.

Counsel prayed that this appeal succeeds and that this honorable Court substitutes the 20-year imprisonment with a lenient sentence.

Respondent's Arguments.

Counsel for the respondent opposed the appeal. He submitted that the trial judge was alive to the Appellant's plea of guilty as one of the mitigating factors which she considered. But she weighed it against the aggravating factors that she examined in great detail as well before handing the appellant the prison sentence of 20 years.

Counsel further submitted that the appeal did not meet legal principles upon which an appellate court will act in exercising its discretion to review a sentence imposed by the trial court which are now fairly well settled. Counsel cited the cases of Ogalo s/o Owoura Vs Uganda Criminal Appeal No.175 of 1954, Kyalimpa Edward Vs Uganda, Supreme Court Criminal Appeal No. 10 of 1995 and Okello Alfred & 5 Ors Court of Appeal Criminal Appeal No. 028 of 2016.

Counsel prayed that the appeal be dismissed for want of merit and that court upholds sentence passed by the trial court.

Consideration of the Appeal.

80 As rightly observed by Counsel for the respondent, the mandate of this Court, as a first appellate Court, when considering an appeal against sentence only is now settled: For us to interfere with the sentence imposed by the trial court, it must be shown that the sentence is illegal, or founded upon a wrong principle of the law, or that the trial court failed to take into account an important matter or circumstance, or made an error
85 in principle, or imposed a sentence which is harsh and manifestly excessive in the circumstances. (See Kiwalabye Bernard Vs Uganda, Supreme Court Criminal Appeal No.143 of 2001(unreported); Wamutabenawe Jamiru Vs Uganda, Supreme Court Criminal Appeal No. 74 of 2007, Rwabugande Moses Vs Uganda, Supreme Court Criminal Appeal No. 25 of 2014) and Kamy Johnson Wavamuno Vs Uganda, Supreme Court Criminal Appeal No. 16 of 2000 (unreported))

The complaint of the appellant is that the sentence of 20 years' imprisonment was harsh and excessive in view of the fact that the appellant had pleaded guilty and did not waste court's time and
95 Government resources.

Further that the sentence did not comply with the principle of "consistency" in sentencing.

The respondent's counsel disagreed.

While sentencing the appellant the trial judge stated thus:

100 *"When passing sentence in a case of Aggravated Defilement, court considers both the mitigating and aggravating factors.*

*In the instant case, **the convict pleaded guilty after serving the witnesses. It is the only mitigating factor in this case.***

105 *The convict who has a woman in his life as court has been informed by the victim's mother left his wife/woman to defile a victim who was only 10 years. He did not do it once but twice.*

The police Form 3A indicates that the child's hymen was ruptured and her vulval tissues were reddened. This was a sign of deep penetrative sex with a child of tender age. The injury inflicted was serious.

110 *The convict was 33 years old making the age difference great.*

Much as the victim's mother is ready to forgive and has already forgiven, this is a crime against society. She is but a witness in the case. She is not the one who was sexually abused. It is the duty of this court and cardinal purpose of the law to protect children against sexual violence. No amount of compensation will restore the sanctity of the innocent victim of this heinous sexual violence. The beneficiary of any compensation will be the mother of the victim. This court will not allow commercialization of the heiners of Aggravated Defilement. The convict's conduct was atrocious, barbaric and gruesome.

120 *He therefore deserves to be punished for his deprived mind. He deserves life imprisonment to protect young children who can easily be lured with Shs. 5,000/=. **But because he pleaded guilty**, he is sentenced to 20 years imprisonment, period on remand inclusive." [Emphasis added]*

125 From the above, it is quite clear that the appellant has no basis for faulting the trial Judge for allegedly not considering the fact that he had pleaded guilty. The expression to the effect that the convict had "pleaded guilty" is mentioned twice by the trial judge as a mitigating factor. But the said mitigating factor was clearly outweighed by the numerous aggravating factors which the trial judge considered.

130 As regards the second leg of the appellant's complaint to the effect that the trial judge did not consider the principle of "consistency" of sentences, a close analysis of the judge's decision does not indicate that she ever alluded to the term "consistency" or words synonymous with it at all. However, her sentence was not out of the range of the sentences that
135 have been imposed or confirmed by this court and the Supreme Court in cases of Aggravated Defilement.

In Kavuma Edward Vs Uganda, Court of Appeal Criminal Appeal No. 37 of 2014 where the appellant was a paternal uncle of the victim aged 7 years' old was convicted of the offence of aggravated defilement the sentence imposed was 18 years' imprisonment.

In Anyolitho Robert Vs Uganda, Court of Appeal Criminal Appeal No. 22 of 2012, the appellant who was the paternal uncle of the victim, a girl aged 14 years was convicted of the offence of aggravated defilement and sentenced to 18 years' imprisonment. This Court confirmed the sentence on appeal.

In Candia Akim Vs Uganda, Court of Appeal Criminal Appeal No. 0181 of 2009, this Court confirmed a sentence of 17 years' imprisonment for the offence of aggravated defilement. The appellant in that case was a step-father of the 8-year-old victim.

In our view, inspite of the trial judge not using the term "consistency of sentences" or words synonymous with it, while sentencing the appellant, her decision suggests that she was alive to the range of sentences in similar matters and had the principle at the back of her mind while sentencing the appellant. Accordingly we find that the sentence of the trial judge is not manifestly low or high to warrant interference by this court on that ground.

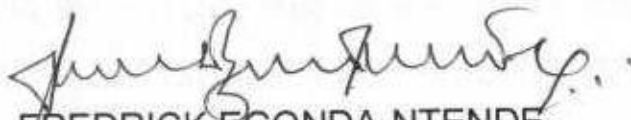
The aforesaid notwithstanding, we have noted that the sentence imposed by the trial judge was not precise as to its commencement date and the remand period which are supposed to be deducted from the sentence in accordance with Article 23 (8) of the Constitution of the Republic of Uganda. A convict is entitled to know from the court itself the imprisonment term he/she is to serve with sufficient precision and

not to be left by court to be at the mercy of the Prison Authorities or any other body to put an interpretation to what the court meant. For this reason, we set aside the sentence of the trial court, invoke Section 11 of the Judicature Act and substitute it as per the decision of court below.

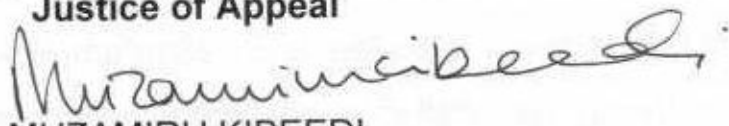
Decision.

After taking into account both the aggravating and mitigating factors as set out by the trial court and, in line with the principle of parity in sentencing, we hereby order as follows: The appropriate sentence in this case would be 20 years' imprisonment from which we give the appellant credit for having pleaded guilty to the offence, which we put at 6 years in the circumstances of this case. We further deduct the period of 9 months and 8 days that the appellant spent on pre-trial detention. We therefore sentence the appellant to a term of 13 years 2 months and 23 days' imprisonment to be served from the 15th day of September 2016, the date of conviction.

Signed, dated and delivered this 15th day of September 2020


FREDRICK EGONDA-NTENDE
Justice of Appeal


CHEBORION BARISHAKI
Justice of Appeal


MUZAMIRU KIBEEDI
Justice of Appeal