

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT GULU

[*CORAM: Kakuru, Egonda-Ntende & Obura, JJA*]

Criminal Appeal No.159 of 2014

(Arising from High Court Criminal Session Case No. HCT-02-CR-SC-161-2012 at Gulu)

Between

ODONGO KOMAKECH=====Appellant

And

Uganda=====Respondent

(On Appeal from the Judgment of the High Court of Uganda [Alfonse Ovin-Dollo, J.] sitting at Gulu and delivered on the 26th July 2013)

JUGDEMENT OF THE COURT

Introduction

1. The appellant was indicted and convicted of the offence of rape contrary to sections 123 and 124 of the Penal Code Act. The particulars of the offence were that the appellant on the 16th day of November 2012 at Olinga village in Amuru District had unlawful carnal knowledge of a woman, namely, Rebecca Agaro without her consent. He was tried and convicted of the said offence and sentenced to 35 years imprisonment. He now appeals against sentence only.
2. The sole ground of appeal states,

‘That the learned trial judge erred in law and in fact when he imposed a sentence of 35 years imprisonment which sentence was harsh and manifestly excessive in the circumstances of the case.’
3. The respondent opposed the appeal.

Submissions of Counsel

4. Mr Simon Ogen appeared for the appellant on state brief while the respondent was represented by Mr Martin Rukundo, Principal State Attorney in the Office of the Director, Public Prosecutions. Mr Ogen submitted that the sentence imposed on the appellant was not only harsh and manifestly excessive; being out of range with sentences imposed by the courts for similar offences but the sentence was also illegal for not complying with Article 23 (8) of the Constitution. He referred to the case of Rwabugande Moses v Uganda, S C Criminal Appeal No. 25 of 2014 (unreported).
5. Mr Martin Rukundo conceded that the sentence was illegal as the learned trial judge had not deducted the period spent on remand from the appropriate sentence. He therefore submitted that this court should exercise its powers under section 11 of the Judicature Act and sentence the appellant afresh.

Analysis

6. The learned trial judge dealt with the sentence in the following words.

'This was a most stigmatizing and heart breaking act of immorality. Subject one's own step mother 78 years of age, to sexual intercourse as was the case here was an abominable deed.

Indeed the convict himself was aware of this when he accused the persons who had found him red handed in the act of wishing to bring a curse on him by confronting him with the diabolical deed he had perpetrated.

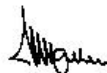
This court has a duty to instil in society, which it is apparent has woefully degenerated into unspeakable immorality, the values that have hitherto kept the fabrics of our Society together and enabled us to move with our heads high above our shoulders.

For this, after giving due consideration to the fact that that the convict has spent almost a year on remand, and is just 30 years of age, I sentence him to jail for 35 years from today 29/07/2013.

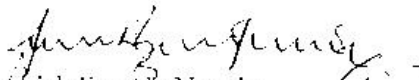
Right of appeal against the conviction and sentence explained.'

7. The Supreme Court in Rwabugande Moses v Uganda (supra) has interpreted Article 23 (8) of the Constitution to require trial courts to deduct from the sentence they were to impose upon a convict after taking into account all aggravating and mitigating factors the period the convict may have spent in pre-trial custody. Failure to do so rendered the sentence illegal. Clearly in this case no deduction was made. The sentence is therefore illegal. We shall proceed, pursuant to section 11 of the Judicature Act to sentence the appellant afresh.
8. The prosecution told the trial court that the appellant has a previous conviction for theft. However, we are unable to see a certificate in respect of such record on the file. We shall therefore treat the appellant as a first offender. The appellant was a young man, 29 years old at the time of the commission of the offence. Nevertheless he committed a very serious offence against his own step mother. A sentence of 10 years imprisonment would be adequate punishment for this offence. As the appellant has spent 8 months and 2 weeks on remand we sentence him to serve a period of 9 years, 3 months and 2 weeks imprisonment from the 26th July 2013, the date of conviction.

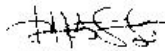
Signed, dated and delivered at Gulu this 7th day of November 2017



Kenneth Kakuru
Justice of Appeal



Frédrick Egondu-Ntende
Justice of Appeal



Hellen Obura
Justice of Appeal