

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT GULU

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

Criminal Appeal No.149 of 2014

(Arising from High Court Criminal Session Case No. HCT-02-CO-SC-211 of 2012 at Gulu)

Between

OJOK ERIC=====Appellant

And

Uganda=====Respondent

(On Appeal from the Judgment of the High Court of Uganda [Alfonse Owiny-Dollo, J.,] sitting at Gulu and delivered on the 18th June 2013)

JUGDEMENT OF THE COURT

Introduction

1. The appellant was indicted and convicted, on his own plea of guilty, of the offence of aggravated defilement contrary to sections 129 (3) and (4) (a) of the Penal Code Act. The particulars of the offence were that the appellant had on the 27th day of July 2012 at Opok village in Amuru District performed a sexual act with Madili Nancy, a girl aged 5 years. The appellant was sentenced to 28 years imprisonment. He now appeals to this Court against sentence only.
2. In his sole ground of appeal the appellant contends that the learned trial judge erred in law when he passed an illegal sentence when he failed to take into account the period the appellant had spent on remand.
3. The respondent did not oppose the appeal conceding that the sentence was illegal as the learned trial judge had not taken account into the period the appellant had spent on remand.

Submissions of Counsel

4. Mr Donge Opar appeared for the Appellant and Mr Martin Rukundo appeared for the respondent. Mr Donge submitted that in imposing a new sentence this court should consider all mitigating factors in favour of the appellant. The appellant was a first offender with no past criminal record. He pleaded guilty saving the court's time and resources. He was remorseful. He was only 18 years old at the time he committed the offence. He should be given an opportunity to reform and become a useful member of society. There were no serious injuries occasioned to the victim. The hymen was intact and the victim suffered only some inflammation of the *labia minora*
5. Mr Martin Rukundo submitted that this court should consider both the aggravating and mitigating factors in imposing an appropriate sentence upon the appellant.


Analysis

6. It has been conceded by the respondent that the sentence imposed by the learned trial judge was illegal for failing to comply with article 23(8) of the Constitution. The learned trial judge did not take into account at all the period the appellant had spent in pre-trial custody. This rendered the sentence imposed a nullity. We shall proceed to impose a new sentence pursuant to section 11 of the Judicature Act.
7. At the time of the commission of the offence the appellant was only 18 years old. He had just turned into being an adult. He pleaded guilty to the offence saving the court's time and resources. He was remorseful and repentant. No doubt he committed a very serious offence and the victim was only 5 years old. Justice ought to be tempered with mercy. Had the appellant been less than 18 years old at the time the offence was committed his sentence would not have exceeded three years imprisonment in accordance with section 94 (7) of the Children Act. In the circumstances of this case an appropriate sentence would be 8 years imprisonment. We deduct therefrom the period of 10 months spent in pre-trial custody and sentence the appellant to 7 years and 2 months imprisonment from the 21st day of June 2013, the date of conviction.

Dated, signed and delivered at Gulu this 7th day of November 2017


Kenneth Kakuru
Justice of Appeal


Fredrick Egonda-Ntende
Justice of Appeal


Hellen Obura
Justice of Appeal