

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT JINJA

5 **CRIMINAL APPEAL NO.203 OF 2010**

*(Arising from the Judgment of the High Court before Hon, Justice V. T
Zehukirize in Criminal Session Case No. 274 of 2010)*

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OUMA WILSON:.....APPELLANT

VERSUS

UGANDA:.....RESPONDENT

15 **CORAM: HON. JUSTICE CHEBORION BARISHAKI, JA**

HON. JUSTICE STEPHEN MUSOTA, JA

HON. LADY JUSTICE PERCY NIGHT TUHAISE, JA

JUDGMENT OF COURT

20 The appellant was indicted and convicted of the offence of Aggravated
Defilement contrary to sections 129 (3) and 4 (a) of the Penal Code
Act and sentenced to 14 years imprisonment.

Being dissatisfied with the sentence passed by the trial court, the
appellant sought and was granted leave to appeal against sentence
25 only on grounds that;

1. The learned trial Judge erred in law and fact when he passed a
sentence without considering the period spent on remand.

2. The learned trial Judge erred in law and fact when he passed a harsh and excessive sentence to the prejudice of the appellant.

Brief background

On 21st day of May, 2009 at or about 1:00pm the victim Nakagwa Joan, a minor aged five years old and Kayesu Christine, her friend went to Kalambi landing site to sell their silver fish. While at the beach, the appellant offered them pancakes, and convinced the victim to go with him to a nearby cassava plantation. Kayesu Christine tried to stop the victim from going with the appellant but she proceeded. That while in the plantation, the appellant ordered the victim to lie down and then had sexual intercourse with her. That after sometime, Kayesu Christine saw the appellant emerging from the plantation followed by the victim. She was bleeding from her private parts and her head and the dress had dust. When one Tigayiza Zilaba saw the victim's condition, he reported the same to the victim's father who caused the appellant's arrest. The appellant pleaded guilty to the offence.

Representation

At the hearing of the appeal, Mr. Mudioble Abed Nasser appeared for the appellant while Ms. Josephine Namatovu (Assistant DPP) appeared for the respondent.

Appellant's submissions

Counsel submitted that the trial Judge passed a sentence without considering the period the appellant spent on remand and passed a harsh and excessive sentence on the appellant who did not waste court's time since he pleaded guilty. In addition, he was 19 years old and was also a pupil in school which should have been a mitigating factor. Counsel relied on the case of **Kibaluma John vs. Uganda Court of Appeal Criminal Appeal No. 225 of 2010** in which the accused person pleaded guilty to the offence of aggravated defilement and this court sentenced him to 11 years imprisonment from the date

of conviction. Counsel prayed for a sentence of 10 years having considered the period spent on remand.

Respondent's reply

5 Counsel opposed the appeal and submitted that the trial Judge duly considered the period the appellant spent on remand and passed an appropriate sentence of 14 years imprisonment. Counsel relied on the case of **Bwambale Mucungizi vs. Uganda Criminal Appeal No. 96 of 2006** in which the victim was 4 years old and the appellant was 18 years. In his appeal against sentence which he considered
10 harsh, this court maintained the sentence of 16 years that had been meted out to the appellant by the trial court. That the circumstances of that case are quite similar to those in the present case and as such, counsel prayed that the 14 year sentence should be upheld.

Consideration of the appeal

15 Before court resolves the appeal, it recalls that **Rule 30 of the Judicature (Court of Appeal Rules) Directions SI 13-10** provides that, on any appeal from a decision of the High Court acting in the exercise of its original jurisdiction, this court has to: reappraise the evidence and draw its own inferences of fact; and in its discretion, for
20 sufficient reason, may take additional evidence or direct that additional evidence be taken by the trial court or by a commissioner. This same principle is reflected in the jurisprudence of the former East African Court of Appeal and the Supreme Court. As a first appellate court, this Court has to reconsider the entire evidence and
25 proceedings on record and subject it to a fresh and exhaustive scrutiny and make its own conclusion, bearing in mind that it did not have the opportunity to see and hear the witnesses testify or the appellant plead and should, where available on record, be guided by the impression of the trial Judge on the manner and demeanor of
30 witnesses (see **Bogere Moses and Another v. Uganda, Supreme Court Criminal Appeal No. 1 of 1997, Okwonga Anthony V. Uganda Supreme Court Criminal Appeal No. 20 of 2000,**

Kifamunte v Uganda Supreme Court Criminal Appeal No. 10 of 1997 and Pandya v. R [1957] EA 336).

Review of sentence

The principles on which this Court may interfere with a sentence are well settled. An appellate court should not interfere with a sentence imposed by a trial court where the trial court has exercised its discretion on sentence, unless the exercise of that discretion is such that it results in the sentence imposed to be manifestly excessive or so low as to amount to a miscarriage of justice, or where the trial court ignored to consider an important matter or circumstance which ought to be considered while passing sentence or where the sentence imposed is wrong in principle (see ***Kyewalabye Bernard v. Uganda Supreme Court Criminal Appeal No. 143 of 2001***). It does not matter that this Court would have given a different sentence if it had been the one trying the appellant (see ***Ogalo s/o Owoura v. R (1954) 24 EACA 270***).

We have evaluated the record of proceedings of the sentencing Judge as well as the trial record and judgment. We have also carefully considered the submissions of Counsel for both sides.

It is counsel for the appellant's argument that the trial Judge did not put into account the period the appellant had spent on remand. The Constitution provides that the sentencing Court must take into account the period spent on remand.

Article 23(8) of the Constitution provides:-

"Where a person is convicted and sentenced to a term of imprisonment for an offence, any period he or she spends in lawful custody in respect of the offence before the completion of his or her trial shall be taken into account in imposing the term of imprisonment."

It was held in the Supreme Court decision of **Abelle Asuman Vs Uganda S.C.C.A No 66 of 2016** that the above provision;

*“does not provide that the taking into account has to be done in an arithmetical way. The constitutional command in **Article 23(8) of the Constitution** is for the Court to take into account the period spent on remand.”*

5 While passing sentence, the trial Judge held that;

“Having considered all the circumstances of this case and the period the convict has been on remand and doing the best I can I sentence him to a term of fourteen years imprisonment.”

10 From the above excerpt, it is clear that the trial Judge took into account the period the appellant spent on remand and as such, ground one of the appeal is dismissed.

15 Ground two of the appeal faults the trial Judge for passing a harsh and excessive sentence on the appellant. The trial sentencing Judge noted that the appellant was a first offender who pleaded guilty thereby saving court’s time and resources. He was also a young man at the time of commission of the offence and appeared repentant. On the aggravating side, he noted that the appellant committed a serious offence by defiling a 5 year old child and such little girls deserve protection form court against the likes of the convict.

20 This court, in the case of **Chandia James Vs Uganda Criminal Appeal No. 66 of 2010** substituted a life sentence for aggravated defilement with a 14 year sentence. We therefore find that the sentencing Judge weighed both the aggravating and mitigating factors of the case and the 14 year sentence meted out on the
25 appellant was appropriate in the circumstances of the case. We have no reason to interfere with the trial Judge’s discretion.

The appeal is hereby dismissed.

Dated this 17th day of July 2019

