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THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT MASAKA
CRIMINAL APPEAL NO. 128 OF 2013

(CORAM: F.M.S Egonda-Ntende, JA, Hellen Obura, JA & Stephen Musota, JA)

SSEBANDEKE RONALD:.....APPELLANT

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VERSUS

UGANDA:.....RESPONDENT

(Appeal from the decision of Hon. Lady Justice Margaret C. Oguli Ouma holden at Masaka High Court in Criminal Session Case No. 128 of 2013 delivered on 04/09/2013)

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JUDGMENT OF THE COURT

This is an appeal against sentence of 13 years imprisonment imposed on the appellant by Margaret C. Oguli Ouma, J sitting at Masaka on 4th September, 2013 upon him being convicted on his own plea of guilt of the offence of rape contrary to sections 123 and 124 of the Penal Code Act.

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The facts giving rise to this appeal are that on 4/7/2013 the victim, Nabirye Masitula was convinced by the appellant and his accomplice to move with them to Misaali village to get casual work. Upon reaching there, the appellant and his accomplice led her to an isolated building where she found 3 other men. She was wrestled by all the 5 men and eventually raped in turn throughout the whole night. In the morning, the victim reported the case to Kitovu

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Police Post and the appellant was arrested. Subsequently, he was indicted and he pleaded guilty to the offence of rape whereupon he was convicted and sentenced to 13 years imprisonment.

5 Being dissatisfied with the decision of the trial Judge, the appellant with leave of this Court appealed against sentence only faulting the learned trial Judge for imposing on him a harsh sentence of 13 years imprisonment.

At the hearing of this appeal, Ms. Kentaro Specioza represented the appellant on State Brief and submitted that by the appellant pleading guilty, he did not waste court's time and it showed he was remorseful. She implored this Court to look at the mitigating factors and re-consider them to impose a lesser sentence of 6 years imprisonment from which the period of 1 year and 1 month the appellant spent in lawful custody should be deducted.

Ms. Akasa Aminah, a State Attorney from the Office of the Director Public Prosecutions represented the respondent and submitted that the sentence of 13 years imposed on the appellant was not excessive considering the aggravating factors. She added that the trial Judge considered both the mitigating and aggravating factors before arriving at the sentence. Counsel prayed that the appeal be dismissed and the sentence be maintained.

It is settled law that an appellate Court cannot interfere with the sentence imposed by the trial court in the exercise of its discretion unless such exercise of discretion results into a sentence which is manifestly excessive or so low to amount to a miscarriage of justice or in instances where the sentence imposed is wrong in principle. **See: *Kiwalabye Bernard vs Uganda, SCCA No.143 of 2001***

We have perused the sentencing proceedings at page 7 and found that the learned trial Judge took into consideration both the mitigating and aggravating factors. She noted that the appellant appeared remorseful and pleaded guilty at the first opportunity which did not waste court's time. He was aged 24 years and therefore has high chances to reform. He has two children and an orphaned child to look after and had been on remand for 1 year and 1 month. However, the trial Judge also considered the fact that rape has become rampant in the

5 community and that the appellant committed the crime in a brutal manner calling upon even his friends to molest the victim. She then imposed a sentence of 16 years.

It is contended for the appellant that the sentence is harsh and excessive in the circumstances. We have considered the range of sentences in similar cases where appellant pleaded guilty to determine whether the sentence imposed on the appellant was indeed harsh
10 and excessive. In **Aliga Ben vs Uganda, CACA No. 0069 of 2014**, the appellant was indicted of the offence of rape of an 80 year old woman. He pleaded guilty and was sentenced to 12 years imprisonment. On appeal against sentence only, this Court dismissed the appeal and maintained the sentence of 12 years imprisonment.

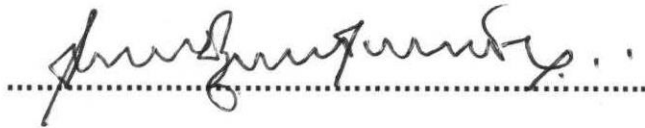
In **Baraza Patrick vs Uganda, CACA No. 106 of 2014**, the appellant was convicted on his
15 own plea of guilt of the offence of rape of a victim aged 28 years and sentenced to 24 years and 7 months imprisonment. He appealed to this Court against sentence only on the ground that it was harsh and excessive in the circumstances and the sentence was reduced to 16 years and 7 months imprisonment.

We therefore find the sentence of 13 years imprisonment within the range of sentences for
20 rape. It is also worth noting that this was not a single incident of rape but the appellant was complicit in setting up an act of a gang rape over the whole night. This therefore called for severity of sentence notwithstanding the mitigating factors and as such, we are not persuaded to reduce the sentence. In the premises, we find no merit in this appeal, and we accordingly dismiss it.

25 We so order.

Dated at **Masaka** this 30th day of July.....2018

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Hon. Justice F.M.S Egonda-Ntende

JUSTICE OF APPEAL



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Hon. Lady Justice Hellen Obura

JUSTICE OF APPEAL



Hon. Justice Stephen Musota

JUSTICE OF APPEAL

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