

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

5 **CORAM: HON. JUSTICE A.E.N. MPAGI – BAHIGEINE, JA.**
HON. JUSTICE C.N.B.KITUMBA, JA.
HON. JUSTICE S.B.K. KAVUMA, JA.

CRIMINAL APPEAL No.131 OF 2002

10 **TUMWESIGYE KASSIM ::::::::::::::: APPELLANT**

Versus

15 **UGANDA ::::::::::::::: RESPONDENT**

***[Appeal from the sentence of the High Court (Mugamba, J)
dated 20th August 2002 in Criminal Session Case No.60 of 2001]***

20 **REASONS FOR THE DECISION OF THE COURT**

Tumwesigye Kassim alias Tumwesigire, was convicted of defilement, contrary to section 129 (1) of the Penal Code Act and sentenced to 14 years imprisonment. He appealed against sentence only. On 3rd February 2009, we heard the appeal and dismissed it promising to give our reasons later, which we now do.

The prosecution case was that the appellant was a teacher at the school where the complainant, who was then aged six years, was a pupil. During the school holidays, the appellant had a programme at the school, where he used to give extra classes to pupils. On 14th May 1999, while the complainant was with other pupils sweeping the compound, the appellant called her and took her to the office at the school, where he had sexual intercourse with her. He warned her not to tell any one.

35 However, the complainant revealed what had happened to her brother Kamugisha Ghaggafi, (PW3), who in turn informed their parents.

The complainant was medically examined and it was confirmed that she had been defiled. The appellant was arrested and charged with the offence of defilement. In his defence, he set up an alibi.

40 The learned trial judge rejected his defence, believed the prosecution case, convicted him as indicted and sentenced him to 14 years imprisonment.

He was dissatisfied with the sentence and filed his appeal to this Court on the sole ground that –

5 **“ The sentence of (fourteen)14 years imprisonment passed the by the trial judge on the appellant was hash, in the circumstances of the case, considering the mitigating factors by the appellant.”**

He prayed court to allow the appeal and reduce the sentence accordingly.

10 Mr. Mark Bwengye, learned counsel for the appellant, contended that the sentence of 14 years imprisonment was harsh in the circumstances considering the mitigating factors that had been raised by the appellant. The appellant’s counsel repeated the mitigating factors that the appellant had raised in the High Court, namely that the appellant had eleven dependants, two of whom were
15 lame and four were orphans. He is the sole breadwinner. Counsel mentioned the period the appellant had been in prison. He submitted that the victim was a very young child, had gone over the trauma and is carrying on with her life. He prayed court to reduce the sentence to 7 years imprisonment.

20 Ms. Alice Komuhangi, learned Principal State Attorney, for the respondent, opposed the appeal and supported the sentence passed by the trial judge. In her view, that was the appropriate sentence for such an offender.

We carefully perused the record and listened to the submissions of both
25 counsel. We are aware that the maximum sentence for defilement of that nature is death. Before passing sentence, the learned trial judge took into account all the relevant mitigating circumstances. We found that the appellant was a teacher, who should have protected the victim but, instead, ravished her.

30 In our view, the sentence of 14 years imprisonment is neither illegal nor harsh. The appellant deserved no mercy. He is a disgrace to himself, to his profession and to society. There is no plausible reason for reduction of his sentence. That is the reason why we dismissed the appeal.

35 Dated at Kampala this 7th day of April 2009.

A.E.N.Mpagi – Bahigeine
JUSTICE COURT OF APPEAL

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C.N.B. Kitumba
JUSTICE COURT OF APPEAL

S.B.K. Kavuma
JUSTICE COURT OF APPEAL