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THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT MASAKA
CRIMINAL APPEAL NO. 125 OF 2013

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

TAREMWA WILSON:.....APPELLANT

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VERSUS

UGANDA:.....RESPONDENT

(Appeal from the decision of Hon. Lady Justice Margaret C. Oguli Oumo holden at Masaka High Court in Criminal Session Case No. 066 of 2013 delivered on 10/09/2013)

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JUDGMENT OF THE COURT

This appeal arises from the sentence of the High Court sitting at Masaka in which Her Lordship Margaret C. Oguli, J convicted the appellant on his own plea of guilt of the offence of aggravated defilement contrary to sections 129 (3) & (4) of the Penal Code Act and sentenced him to 18 years imprisonment.

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The facts giving rise to this appeal as they appear on court record are that on 23rd January, 2013 the victim Juliet Nakato who was aged 13 years at the material time went to the bush to collect firewood. While there, she came across the appellant who deceived her that he was going to take her where there was much firewood. The victim followed the appellant whereupon he pulled her to the ground, removed her knickers and defiled her. The victim
25 went home crying and narrated the incident to her father. With the help of other residents, the appellant was arrested and produced at Nsangi Police Post where he confessed to committing the offence in his police charge and caution statement.

The appellant was indicted and he pleaded guilty to the offence of aggravated defilement whereupon he was convicted and sentenced to 18 years imprisonment. Being dissatisfied

5 with the decision of the trial Judge, the appellant appealed to this Court against sentence only on 2 grounds namely that;

“1. The learned trial Judge erred in law and fact when she passed sentence without considering the period the appellant had been on remand.

10 *2. The learned trial Judge erred in law and fact when she passed a harsh/excessive sentence to the prejudice of the appellant.”*

At the hearing of this appeal, the appellant was represented by Mr. David Kasadha on state brief while Mr. David Baxter Bakibinga, a Senior State Attorney from the Office of the Director Public Prosecutions represented the respondent.

15 Counsel for the appellant was granted leave to appeal against sentence only and he submitted that the learned trial Judge did not take into account the period of 8 month the appellant spent in lawful custody while sentencing the appellant which contravened Article 23 (8) of the Constitution. He referred to the decision of the Supreme Court in ***Rwabugande Moses vs Uganda, SCCA No. 25 of 2014*** in which such a sentence was held to be illegal. He prayed that this Court finds the sentence illegal and takes into account the fact that the
20 appellant pleaded guilty and the other mitigating factors on court record to impose a lenient sentence. He referred to the case of ***Birungi Moses vs Uganda, CACA No. 177 of 2014*** in which the appellant was convicted of aggravated defilement and sentenced to 30 years imprisonment and on appeal, this Court reduced his sentence to 12 years imprisonment.

25 On the other hand, counsel for the respondent conceded that the sentence was illegal as it clearly appears to have been passed without the trial Judge taking into account the provisions of Article 23 (8) of the Constitution. He invited this Court to consider the aggravating circumstances of this case and sentence the appellant to 10 years imprisonment.

5 We have carefully perused the court record and considered the submissions of both learned
counsel as well as the law and authorities cited to us. While sentencing the appellant, the trial
Judge stated as follows;

10 *"I have listened to the submissions of counsel for the state and the accused and the
accused's own statement in mitigation. The accused is first offender. Accused pleaded at the
first opportunity and has saved court's time and resources. He is only 18 years of age and
there are high chances of reforming. He has pledged not to commit such acts. The fact that
evidence of defence is irrelevant; what matters in case of aggravated defilement is that, the
gist of its evidence years of age. This crime has become rampant in the society and the
convict should be given a deterrent sentence that will send a message to other would be
15 perpetrators. On the pretext that, they thought they were of age. Consequently Court imposes
a sentence of 18 years imprisonment on the accused, to deter with would be offenders from
such crimes. (SIC)"*

We note that the learned trial Judge did not take into consideration the period the appellant
had spent in lawful custody. Article 23 (8) of the Constitution requires court to take into
20 account, while passing a sentence, the period a convict spent in lawful custody prior to
completion of his trial. Failure to do so renders the sentence illegal. **See: *Rwabugande
Moses vs Uganda (supra)***

We therefore find that the sentence of 18 years imposed upon the appellant was illegal. We
now invoke section 11 of the Judicature Act which permits this Court to exercise the power,
25 authority and jurisdiction of the trial court to impose an appropriate sentence of its own.

We take into consideration the aggravating factors, namely; the offence with which the
appellant is charged carries a maximum sentence of death on conviction, the victim was only
13 years while the appellant was an adult of 19 years, the appellant's action subjected the
victim to trauma which she is going to live with for the rest of her life. The appellant took away
30 the innocence of the victim and that makes him a danger to the girl children in society. A

5 deterrent sentence was prayed for. The mitigating factors presented include; the appellant is a first offender and he pleaded guilty and saved court's time. He is only 18 years and has high chances of reforming. He has been on remand for 8 months. He was planning to go to school. He had family problems and had lost his mother. He is sorry for having committed the offence. He has learnt a lot from prison. A lighter sentence was prayed for.

10 We have also considered the range of sentences in the following cases decided by this Court in similar offences.

In **Lukwago Henry vs Uganda, CACA No. 0036 of 2010** this Court upheld a sentence of 13 years imposed upon the appellant for the offence of aggravated defilement on his own plea of guilt.

15 In **Kibaruma John vs Uganda, CACA No. 225 of 2010** the appellant was convicted of the offence of aggravated defilement of a 9 year old girl on his own plea of guilt and sentenced to 15 years imprisonment. On appeal to this Court, his sentence was reduced to 11 years imprisonment.

20 Having taken into account both the aggravating and mitigating factors set out above and the range of sentences in cases of aggravated defilement, we are of the considered view that a sentence of 11 years will be appropriate in the circumstances of this case. We deduct the period of 8 months from the 11 years and sentence the appellant to 10 years and 4 month which he shall serve from the date of conviction, which is 10/09/2013.

We so order.

25 Dated at **Masaka** this...^{30th}...day of...^{July}.....2018

F.M.S Egonda-Ntende

Hon. Justice F.M.S Egonda-Ntende

JUSTICE OF APPEAL

[Signature]

Hon. Lady Justice Hellen Obura

JUSTICE OF APPEAL

[Signature]

Hon. Justice Stephen Musota

JUSTICE OF APPEAL