

**THE REPUBLIC OF UGANDA**  
**IN THE COURT OF APPEAL OF UGANDA AT MASAKA**  
**CRIMINAL APPEAL NO. 612 OF 2014**

**RWAGABA SULAIMAN.....APPELLANT**

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**VERSUS**

**UGANDA.....RESPONDENT**

*(Appeal against sentence of the High Court at Masaka in Criminal Session Case No. 0117 of 2012 before Hon. Justice Margaret Oguli Oumo dated 22/4/2013)*

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**Coram: Hon. Lady Justice Elizabeth Musoke, JA**  
**Hon. Mr. Justice Ezekiel Muhanguzi, JA**  
**Hon. Mr. Justice Remmy Kasule, Ag. JA**

**JUDGMENT OF THE COURT**

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**Introduction.**

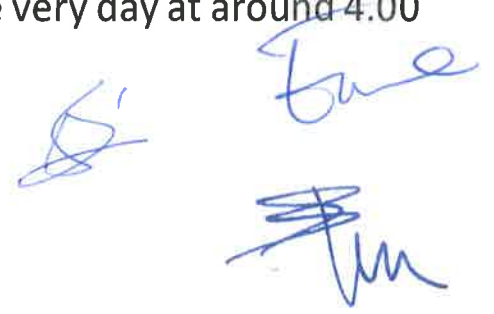
This is a first appeal against the decision of the High Court of Uganda at Masaka delivered on 22<sup>nd</sup> April, 2013 wherein Oguli Oumo, J. convicted the appellant of the offence of Aggravated Defilement on his own plea of guilt and sentenced him to serve a term of 14 years imprisonment.

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**Brief background**

The relevant facts to which the appellant pleaded guilty were that:

On 6<sup>th</sup> May, 2012, the victim's mother left the victim and her younger sister in Kyato Village in Kalungu District because she had to go to Kampala to look after a sick relative. Later on the very day at around 4.00



25 p.m. when the victim's father was in the garden, the accused who was a neighbour to the family called the victim to his place and started touching her private parts while demanding for sexual intercourse. The appellant took the victim to his bedroom and had sexual intercourse with her. He thereafter warned the victim against telling anyone.

30 On the following day, the victim's father noticed her walking with difficulty. When he asked her what the problem was, she kept quiet. She didn't reveal anything. On 10<sup>th</sup> May, 2012 when the victim's mother returned from Kampala, the victim told her that the appellant had had sexual intercourse with her. The victim's mother told her husband who  
35 reported the case at Kalungu Police Post whereupon the appellant was arrested.

Subsequently, the victim was examined on Police Form 3. She was found to be 10 years old. Her private parts showed signs of penetration with a recently ruptured hymen. She sustained injuries in her private parts that  
40 were consistent with force having been used sexually. The accused was examined on Police Form 24. He was found to be 35 years old and of a normal mental state. When the above facts were put to him, the appellant confirmed the same to be correct. He was thereafter duly convicted and sentenced to 14 years imprisonment.

45 With leave of this court granted under section 132(1) (b) of the Trial on Indictments Act and Rule 43 (3) (a) of the Rules of this court, the appellant appealed to this court against the sentence only on the sole ground of appeal that states as follows:-

50 ***"The learned Judge erred in law and fact when she sentenced the appellant to 14 years imprisonment which sentence is harsh and manifestly excessive in the circumstances."***

## **Representation.**

At the hearing of this appeal, the appellant was represented by Ms. Edith  
55 Namata, learned counsel on state brief and the respondent was  
represented by Mr. David Ndamurani Ateenyi, learned Senior Assistant  
DPP. The appellant was present in court.

## **Submissions for the appellant**

Counsel faulted the learned trial Judge for failing to consider the fact that  
60 the appellant was a first offender and that he had pleaded guilty while  
sentencing him and thus resulted into a harsh and excessive sentence in  
the circumstances of this case. In support of her argument, counsel relied  
on *Agaba Job v Uganda, Court of Appeal Criminal Appeal No. 230 of*  
*2003*, where the appellant in that case had pleaded guilty for defiling a 6  
65 year old girl and was sentenced to 10 years imprisonment, which  
sentence was confirmed by this Court on Appeal.

She asked court to consider the principle of consistency and uniformity  
in sentencing and set aside the sentence of 14 years imprisonment and  
substitute it with an appropriate sentence of 10 years.

## **70 Submissions for the respondent**

Mr. Ndamurani conceded that the learned trial Judge did not take into  
account the fact that the appellant was a first offender who had pleaded  
guilty. However, he alluded to the fact that the offence which the  
appellant had been convicted of carried a maximum sentence of death.

75 Counsel pointed out that each case presents its own facts and in the  
instant case, the appellant was aged 35 years old and preyed on an infant  
of 10 years old who was in the same age bracket of his children. Further,  
that the victim sustained injuries in her private parts. Counsel relied on



80 ***Rwabugande Moses v Uganda, Supreme Court Criminal Appeal No. 25 of 2014, Kyalimpa Edward v Uganda, Supreme Court Criminal Appeal No. 10 of 1995***, for the principles upon which an appellate court can interfere with the sentencing discretion of the trial court.

He asked court to disallow the appeal for lack of merit and uphold the sentence of the trial court.

85 **Consideration by court**

We have carefully listened to both Counsel. We have also perused the Court record and considered the authorities cited to us and those that were not cited.

90 We are alive to the duty of this Court as a first appellate Court to re-appraise all the evidence adduced at the trial and to come up with our own inferences. See: - Rule 30 (1) of the Rules of this Court and ***Bogere Moses and Another Vs Uganda, Supreme Court Criminal Appeal No.1 of 1997***, where the Supreme Court noted that:-

95 ***“It is the duty of the first appellate court to rehear the case on appeal by considering all the materials which were before the trial court and make up its own mind.”***

We note from the memorandum of appeal that the appellant is complaining about severity of sentence only.

100 It is now established law that this Court may interfere with the trial Judge’s discretion on sentence only in limited circumstances, which were settled by various earlier decisions and subsequently re-echoed by the Supreme Court in ***Kiwalabye Bernard Vs Uganda, Supreme Court Criminal Appeal No. 143 of 2001*** as follows;-

105 ***“The appellate Court is not to interfere with the sentence imposed by a trial court which has exercised its discretion on sentence unless the***

110 *exercise of the 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 a trial court ignores to consider an important matter or circumstances which ought to be considered while passing the sentence or where the sentence imposed is wrong in principle."*

In this case, while passing sentence, the learned trial Judge stated on pages 11 and 12 of the record of appeal as follows:-

115 *"The convict was charged with aggravated defilement. Court considered the following facts in passing sentence:*

1. *The convict has been on remand for 11 months.*
2. *The convict was 35 years old.*
3. *The convict has three children.*
4. *The convict has been on remand for 11 months.*
- 120 5. *The convict appears remorseful*
6. *The convict has a family of 4 children of 3-12.*

*He has pledged to go and tell his peers not to be involved in such acts.*

125 *On the other hand, the offence with which the convict was charged carries a maximum sentence of death. The victim was only 10 years old and the convict, was almost like her grandfather and his actions are one of those who have made communities unsafe for the girl children and he need to be put away to deter would be perpetrators.(sic)*

*In the circumstances court sentences him to 14 years imprisonment."*

130 It is evident from the above passage that the learned trial Judge did not consider the fact that the appellant was a first time offender and that he had pleaded guilty to the offence. The respondent's counsel conceded to this fact. This omission therefore warrants us to interfere with the sentencing discretion of the trial court.

135 We now invoke *Section 11* of the Judicature Act (CAP 13) and impose a sentence we consider appropriate in the circumstances of this appeal. It provides as follows;-

**“11. Court of Appeal to have powers of the Court of original jurisdiction**

140 ***For the purpose of hearing and determining an appeal, the Court of Appeal shall have all the powers, authority and jurisdiction vested under any written law in the court from the exercise of the original jurisdiction of which the appeal originally emanated.”***

The aggravating factors in this case were that the offence committed by the appellant was a grave one which carries a maximum sentence of death. The victim was of tender age of 10 years.

145 However, there were a number of mitigating factors. The appellant had been on remand for 11 months. He was a first offender who pleaded guilty to the offence. He was still in his youthful age of 35 years and he had a family of 4 children.

150 With regard to the principles of uniformity and consistency we have considered some recent decisions.

In ***Obedi Moses v Uganda, Court of Appeal Criminal Appeal No. 091 of 2014***, this court reduced a sentence of 23 years imprisonment to 15 years imprisonment for the offence of aggravated defilement. In reducing the sentence, court considered the fact that the appellant was a first offender and had pleaded guilty to the offence.

This court in ***Ninsima Gilbert v Uganda, Criminal Appeal No. 0180 of 2010*** reduced a sentence of 30 years imprisonment to 15 years imprisonment for the offence of aggravated defilement considering the fact that the appellant was a first offender with family responsibilities.

160 In ***Ntambala Fred V Uganda, Court of Appeal Criminal Appeal No. 0177 of 2009*** this Court confirmed a sentence of 14 years. The victim was a daughter of the appellant.

165 In ***Birungi Moses v Uganda, Court of Appeal Criminal Appeal No. 177 of 2014 at Fort Portal***, the appellant was convicted of the offence of aggravated defilement and sentenced to 30 years imprisonment. The victim was 8 years old at the time she was defiled. The appellant was aged 35 years and had spent 3 years on remand. This Court after taking into account the period of 3 years the appellant had spent on remand reduced the sentence to 12 years.

170 We have also considered the case of ***Agaba Job v Uganda***, (supra) relied on by counsel for the appellant. In that case, this court upheld 10 years imprisonment and noted that the sentence was rather lenient for the offence of aggravated defilement.

175 In the premises, we note that much as the learned trial Judge did not take into account the fact that the appellant was a first offender and that he had pleaded guilty, the sentence of 14 years imprisonment was not harsh or excessive considering the sentencing range in the above cited cases decided by this Court.

180 Having considered all the aggravating and the mitigating factors in this case, we find a sentence of 14 years imprisonment appropriate. We deduct the 11 months the appellant had spent on remand. He shall now serve a sentence of 13 years and 1 month to run from 22/4/2013 the date of his conviction. We so order.

Dated at Masaka this.....9<sup>th</sup>.....day of.....Dec.....2019.

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The page contains three handwritten signatures in blue ink. One signature is located to the left of the page number '7', another is to the right, and a third is at the bottom right of the page.

**Elizabeth Musoke**  
**Justice of Appeal**

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**Ezekiel Muhanguzi**  
**Justice of Appeal**

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**Remmy Kasule**  
**Ag. Justice of Appeal**